

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

("Collective Action")  
SUPERIOR COURT

---

500-06-001116-207

**Elayne Lemieux**, residing at 12530 70e avenue,  
Montreal, Quebec, H1C 1L2

- and -

**Bart, Raymond, Marquez and Asa**, the Wiener dogs,  
residing at 12530 70e avenue, Montreal, Quebec, H1C  
1L2

Applicants

-vs-

**The Attorney General of Quebec**,  
for the Province of Quebec,  
having an office at 8e étage, 1 rue Notre-Dame Est.  
Montreal, Quebec, H2Y 1B6

- and -

**The City of Montreal**,  
as duly constituted legal person,  
having its headquarters at 275 rue Notre-Dame Est,  
Montreal, Quebec, H2Y 1C6

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVES and  
INJUNCTION**

(Articles 509, 510, 511 and 571 ff., *C.C.P.*)  
(Articles 913, 976, 1457, 1465 and 898.1 *C.C.Q.*)  
(Articles 19.1-19.7, 20 and 21 of the *Environment Quality Act* (ch. Q-2))  
(Articles 7.01 and 7.04, Montreal Regulation 2001-10)  
(Preamble, Articles 1 and 2 of An *Act to Affirm the Collective Nature of Water Resources and to  
Promote better Governance of Water and Associated Environments* c. C-62)  
(Articles 1, 6, 7, 46.1 and 49 of the *Charter of Human Rights and Freedoms* c. C-12)  
(The Public/Environmental Trust, *Institutes of Justinian*, Book 2, Title 1, article 1)  
(*Animal Welfare and Safety Act* ch. B-3.1)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR  
APPLICANTS RESPECTFULLY SUBMIT:**

**I. INTRODUCTION**

1. Applicants Elayne Lemieux and the Wiener dogs wish to institute a class action on behalf of the legal persons forming part of this class, of which the Applicants are members:

All Quebec residents, be they moral or physical persons, including owners, tenants or subtenants of immovable property, and all domesticated animals who resided in the Borough of Riviere des Prairies, Quebec for any period between January 1, 1968 for the City of Montreal and February 13, 2003 for the Province of Quebec and the date on which this action is authorized;
2. The class described in paragraph 1 is composed of the following sub-classes:
  - i. Persons who have owned or rented property in Riviere-des-Prairies, Quebec since January 1, 1968;
  - ii. Persons who have suffered or are likely to suffer health damages due to the pollution emanating from Lot 1 250 042, including increased stress;
  - iii. Any person or animal wishing to invoke the Public/Environmental Trust doctrine against the Province of Quebec for their failure to protect the public's right to pristine public air, water and land in their management of Lot 1 250 042;
  - iv. Any person seeking to represent the interests of domesticated animals residing in Riviere-des-Prairies, Quebec for any period between January 1, 1968 for the City of Montreal and February 13, 2003 for the Province of Quebec and the date on which this action is authorized;
3. The purpose of this class action is for the Court to denounce the failures of the Province of Quebec and the City of Montreal in their failure to protect all the residents of Riviere-des-Prairies from the toxic contamination accumulated on Lot 1 250 042, to condemn the Province of Quebec and the City of Montreal to pay reparations for the damages suffered by the residents of Riviere-des-Prairies, and to condemn the Province of Quebec to rehabilitate Lot 1 250 042;

4. The legal basis for the recognition of flora, fauna, Public/Environmental Trust lands, waters and air in Rivieres-des-Prairies is identified in the thirteen (13) authorities filed as **Exhibits R-0(i)-(xiii)**;

#### **A. THE PARTIES**

5. The Province of Quebec has the obligation of protecting its inhabitants from pollution and protecting the state of the province's water, air and land;
6. The Province of Quebec must fulfill this obligation by investigating, monitoring and auditing polluted locations across the province and ensuring their restoration to safe conditions;
7. Since February 13, 2003, when Cosmopolitain Construction Ltd. received an infraction against the *Environmental Quality Act*, the Province of Quebec has been aware of the pollution accumulated on Lot 1 250 042, yet the Province has continuously failed to identify, monitor, curtail or remediate the contamination on Lot 1 250 042, as well as the waterways, local groundwater (the "Watershed") and Applicants' property;
8. Additionally, the Province of Quebec intentionally and actively sought to conceal the extent of the contamination on Lot 1 250 042 and disguise the property by attempting to repurpose it without taking the required steps to remediate the contaminated soil;
9. The City of Montreal also has the obligation to protect its inhabitants from pollution and to protect public water, air and land from being polluted;
10. The City of Montreal had knowledge that Lot 1 250 042 was heavily contaminated due to its use in the 1960s as an incineration municipal waste dump;
11. Nevertheless, the City of Montreal tolerated the non-remediation of the property and failed to take any action to remedy the contaminated land;
12. Moreover, the City of Montreal intentionally and actively attempted to hide and cover-up the contamination on Lot 1 250 042;

13. Defendants Province of Quebec and City of Montreal controlled zoning, regulation and enforcement in the area around Lot 1 250 042 and are responsible for the urban planning of the area. By recklessly zoning residences in close proximity to industrial contaminant, they have exposed residents to pollution. They also have regulatory authority at all relevant times;

## **B. FACTS**

### **a) Known Contamination on Lot 1 250 042**

14. Multiple environmental reports conducted on Lot 1 250 042 demonstrate that the property is severely contaminated and it contains hazardous pollution;
15. The contamination on Lot 1 250 042 can be divided into (1) Soil Contamination, (2) Heavy Metal and Toxic Compounds Contamination, (3) Public Water Contamination and (4) Biogaz Contamination;
16. **Soil Contamination**, there are three (3) layers of soil stratification, as identified in the Spectrum report produced on August 2, 2006:
  - i. The first layer, from 3.6 meters in depth to about 8 meters, are contaminated soils due to the use of the property as a sanitary incineration landfill from approximately 1963 to 1968. Contamination at that level indicates the burning of household garbage including plastics but not concentrations of asphalt and cement waste;<sup>1</sup>
  - ii. The second layer, from 3 meters in depth to about 5 meters, consists of fill material, graded asphalt and cement tailings which have been deposited on the site and graded asphalt and cement tailings. Once this layer was recognized by Spectrum in August 2006, further testing was performed only below 3.6 m in depth, *specifically* in order not to indicate in environmental audits that at least the first 3.6 m of refuse constituted asphalt and concrete tailings were landfilled without a permit, a protective barrier, leaching ponds, collection or evacuation of leachate. Representatives estimate the period during which this illegal dumping occurred would be, at latest, in 2002;

---

<sup>1</sup> From the Spectrum report, dated August 2, 2006, which was ordered by Cosmopolitain Construction on July 2006 to perform a Phase I environmental audit (Exhibit R-1)

- iii. The third layer are piles cement and asphalt tailings already noted on site in July 2006 in Spectrum Report **Exhibit R-1**. For purposes of authorization Representatives estimate this illegal dumping of hazardous waste on the Orphan Property commenced in 2005 at latest. **Exhibit R-2** indicates that additional tailings have been dumped in piles on the Orphan Property continuously to as recently as February 2022;
  - a) More specifically, on September 2016, Jessica Wrangler, an employee of MELCC, reported that the topsoil contamination included (**Exhibit R-3** at pages 1-7):
    - 1. Two piles of mixed residual material including wood, brick, concrete and construction or demolition debris are improperly sited as defined by the *Regulation Respecting the Landfilling and Incineration of Residual Materials* (chapter Q-2, r. 19.);
    - 2. Residual concrete was also improperly sited;
    - 3. Piles of soil;
    - 4. The volume of two piles of demolition or construction debris were 64 cubic meters +/- 10 cubic meters;
    - 5. The residual concrete was 48 cubic meters;
  - b) The contamination continued, as on December 11, 2020 were approximately 5745 cubic meters of asphalt and approximately 50 piles of mixed concrete and other debris, see (**Exhibit R-4/R-4A and R-4B**), stored on lot 1 250 042. This represents an increase of approximately *90 times* the volume of construction waste on September 28, 2016, see pictures (**Exhibit R-4/R-4C, R-4D, R-4E, R-4F**);

## 17. Heavy Metal and Toxic Compounds Contamination

- i. The soil of Lot 1 250 042 is contaminated with dioxins, furans, petroleum components C10 and C50, PCBs and PAHs. Fourteen (14) heavy metal, including lead, cadmium and zinc, have tested at dangerous levels;
- ii. On December 19, 2017, at the request of MELCC, Les Constructions et Pavages JESKAR Inc. ("JESKAR") had Sanexen Environmental Services test the water table on the property for dioxins and furans. At every test site dioxins and furans were detected (**Exhibit R-5A**, pages 5 and 6). A

number of the test samples exceeded the RES limit by *100 times* and some by *1,000 times* the RES limit (**Exhibit R-5A**, pages 5 and 6);

- iii. On March 28, 2018, a letter from ABS to Yves Peyrat, a MELCC employee, described the dangerous levels of dioxins and furans in the groundwater;
- iv. In addition, ABS informed the Mr. Peyrat that Petroleum Components C 10 and C 50, PAHs, Fourteen (14) heavy metals, as well as other petroleum components all tested at dangerous levels;
- v. On July 24, 2018, the Technical Opinion of H          , an MELCC employee, also confirmed the contamination of the soil with petroleum components and heavy metals;

#### 18. **Watershed Contamination**

- i. The hazardous fill material, graded asphalt and cement tailings which have been deposited in Lot 1 250 042 are leaching into the surrounding groundwater, wetlands and waterways;
- ii. Nearby waterways polluted by the Orphan Lot contamination include the Pinel conservation area, wetlands protected by Ducks Unlimited Canada and MDDELCC 2016, Park des Cageux, (**Exhibit R-6**), the Pointe aux Prairies Nature Park (**Exhibit R-7**), Marais du parc de conservation du ruisseau de Feu, (**Exhibit R-8**), the five protected islands of the Mitan Archipelago (**Exhibit R-9**) and the Riviere des Prairies (pages 4 and 5) from aquifer on the Orphan Property;
- iii. In particular, Ms. Houde's July 24, 2018 report emphasizes that water sampling indicated dangerous levels of zinc, PCBs, PAHs, dioxins and furans;

#### 19. **Biogaz Contamination**

- i. It is known that there are elevated levels of biogas on Lot 1 250 042;
- ii. Ms. Houde explains in her July 24, 2018 report that in November 2015, there were elevated concentrations of methane in the air between 0 and

8,5% by volume as collected in 10 observation wells (**Exhibit R-3** at page 32);

20. Evidently, the astounding levels of contamination on Lot 1 250 042 dating back to the 1960s are an environmental tragedy;
21. The condemned property poses a serious risk to the wellbeing of any living being and water system in the surrounding area,
22. Prompt, decisive and efficient actions must be undertaken in order to remediate the contamination of Lot 1 250 042 and stop its continued pollution of the air, land and water systems;

**b) The Province of Quebec's Knowledge and Actions Regarding Lot 1 250 042**

***The Province of Quebec Knew of the Contamination of Lot 1 250 042***

23. Applicants submit that the Province of Quebec knew, or ought to have known, about the contaminated state of Lot 1 250 042 since the 1960s when the property was used as an incineration municipal waste dump;
24. On January 31, 2005, Cosmopolitain Construction Ltd. was issued two Statements of Offence for two infractions against article 109.1.1 of the *Environmental Quality Act* which occurred on February 13, 2003 and September 17, 2003. The company plead not guilty to both offences and Applicants submit that these infractions were related to the contamination on Lot 1 250 042 (**Exhibit R-10/R-10A, R-10B, R-10C, R-10D, R-10E and R-10F**);
25. On March 9, 2007, Cosmopolitain Construction Ltd. plead guilty to the offence which occurred on September 17, 2003 and was condemned to pay the minimum sentence (\$10,000), while the second file was withdrawn, indicating that the Attorney General of Quebec offered a plea deal which minimized the environmental damage created by the company;
26. As such, Quebec has been aware of the contamination on Lot 1 250 042 since at least February 13, 2003;
27. Since July 2015, the contamination of Lot 1 250 042 has been subject of public knowledge, as the presence of hazardous contaminants was declared in the Deed of Sale between Cosmopolitain Construction Ltd. and Les Placements 4C Inc. (**Exhibit R-11**);

28. Additionally, since 2016 the Province of Quebec has had extensive documented knowledge of the contamination on Lot 1 250 042;
29. On September 28, 2016, Jessica Wrangel, an MELCC employee, visited Lot 1 250 042 for a total of 15 minutes following a citizen complaint about the presence of asphalt and concrete waste on the property;
30. On October 7, 2016, Ms. Wrangel conducts an arial survey of Lot 1 250 042;
31. On February 20, 2017, Ms. Wrangel produces a report outlining the illegal presence of construction and demolition materials, a violation of articles 22 and 66.1 of the *Environmental Quality Act*;
32. On February 23, 2017, as a result of Ms. Wrangler's September 28, 2016 visit, the MELCC presents a Notice of Non-Conformity to JESKAR, the operator of Lot 1 250 042 at the time;
33. On March 1, 2017, a Notice of Non-Conformity is issued to Les Placements 4C inc., the owner of the property, as a result of Ms. Wrangler's September 28, 2016 visit to Lot 1 250 042;
34. On September 25, 2017, the MELCC receives a second citizen complaint about the contamination on Lot 1 250 042, yet no visit is conducted until a year later, in September 2018 (**Exhibit 3**);
35. On September 26, 2017, Mr. Yves Peyrat, an MELCC employee, sent an email concerned a proposed Brownfield development for Lot 1 250 042. Mr. Peyrat recognizes that the property's soil is contaminated and this must be remediated, that there is severe hydrocarbon contamination in soil and groundwater, that the audit reports failed to assess all contamination, that the location of testing wells was inappropriate for ground water quality testing and that it was *essential* to know the provenance of the water pollution;
36. On or around December 2017, the MELCC ordered JESKAR to conduct a test of the water table on the property for dioxins and furans. JESKAR mandated Sanexen Environmental Services to carry out the study and their report is produced on December 19, 2017;



37. On March 28, 2018, Mr. Peyrat received a letter from Groupe ABS indicating dangerous levels of dioxins and furans in the groundwater of Lot 1 250 042. Additionally, PHAs, fourteen (14) heavy metals, PCBs dioxins and furans, and petroleum components including C10 and C50 all tested at dangerous levels on the property;
38. On July 19, 2018, Lot 1 250 042 is designated contaminated and placed on the *Repertoire des terrains contaminés* (**Exhibit R-12A and R-12B**);
39. On July 24, 2018, MELCC employee Hélène Houde circulates her report which negates the possibility of the Brownfield development, carefully outlines the extreme contamination of Lot 1 250 042 and the extensive and urgent requirements necessitated to rehabilitate the property;
40. On September 11, 2018, Ms. Wrangel returns to Lot 1 250 042 following a second citizen complaint about the illegal storage of concrete and asphalt waste, in addition to the dumping of soil. She visits the site for one hour and 13 minutes and conducts a visual evaluation of the terrain;
41. On October 19, 2018, Ms. Wrangel produces a report following her visit to Lot 1 250 042 on September 11, 2018 and her subsequent discussions with Mr. Robert Marier (the director of Groupe ABS) and Mr. John Saba (the secretary of Les Placements 4C Inc.). Despite erroneously concluding that the risk factors of Lot 1 250 042 were minimal, Ms. Wrangel does acknowledge that the property is heavily polluted (**Exhibit R-3**);
42. The MELCC emitted a Notice of Non-Conformity to Les Placements 4C Inc. on October 31, 2018 as a result of Ms. Wrangel's September 11, 2018 visit (**Exhibit R-3**);
43. On March 1, 2019, the MELCC emitted a \$5,000 fine to Les Placements 4C Inc. for their failure to act following the Notice of Non-Conformity (**Exhibit R-3**);
44. On March 4, 2019, as appears from the land registry title produced as **Exhibit R-13**, Les Placements 4C Inc. sold Lot 1 250 042 to 9380-9663 Quebec Inc for \$300,000. The company 9380-9663 is owned by Enzo Di Gneo who appears to have won \$12,5 million on May 25, 2017 (**Exhibit R-14**);
45. The Deed of Sale of the property contains a special clause which states, "The Vendor declares that there are contaminants in the land that may constitute a

serious hazard to the health and to the security of people or for jeopardizing its integrity.”;

46. Prior to the sale, on August 11, 2018, Les Placements 4C Inc. and 9380-9663 Quebec Inc. signed a preliminary contract for sale of Lot 1 250 042 as appears from the “declaration concerning the preliminary contract” on page 4 of the deed of sale, which states “except in the case of conflict, the parties confirm the agreements therein contained but not reproduced herein.” produced as (**Exhibit R-13**). The terms of that declaration may well be determinative of liability in this matter;
47. On April 17, 2019, Ms. Wrangel calls Mr. John Saba of Placements 4C Inc. to inquire about who will assume responsibility of the company and ends the call when he places her on hold for 5 minutes;
48. On April 25, 2019, Ms. Wrangel informs the new owners of Lot 1 250 042 that their property contains 2 872 meters cubed of residual materials which must be removed from the property;
49. Additionally, the Applicants submit that before July 2018, the MELCC had access to the following environmental reports conducted on Lot 1 250 042:
  - i. The Spectrum Report produced for Cosmopolitain Construction Limited on August 2, 2006;
  - ii. The Spectrum Report produced for Cosmopolitain Construction Limited on November 25, 2013;
  - iii. The Groupe ABS Report produced for the engineering firm Équiluqs Inc. on February 2016;
  - iv. The Sanexen Environmental Services Inc. Report produced for JESKAR on December 19, 2017;

***The Province of Quebec Failed to Mitigate the Contamination of Lot 1 250 042***

50. Applicants submit that Quebec, having knowledge of the extensive contamination on Lot 1 250 042, failed to properly investigate, monitor and test the pollution on the property.

51. Moreover, Quebec failed to take decisive and forceful action to ensure the rehabilitation of Lot 1 250 042 to stop the continued pollution of the property, the surrounding areas and the nearby water systems;
52. Despite ample knowledge that Lot 1 250 042 served as a sanitary incineration landfill in the 1960s, Quebec did not investigate, monitor or test any soil samples on the property until December 1, 2021 when they were sued by Applicants;
53. Similarly, Quebec did not make any attempts the rehabilitate or order the rehabilitation of the soil contaminated with burnt household waste;
54. Furthermore, the visits and subsequent reports of MELCC investigator Ms. Wrangler following the complaints of citizens were insubstantial and poorly executed;
  - i. Three environmental audit reports indicate that at least 10 piezometers are clearly visible on Lot 1 250 042 since 2013. It is inconceivable that an inspection as detailed as performed in 2016, 2018 and 2020, including a large number of photographs of the Orphan Property would not cause a reasonable inspector to be aware of the environmental auditing performed via those piezometers;
  - ii. The MELCC should have sampled the soil on the Orphan Property and should then have realized that property was deeply contaminated and contained hazardous waste. As the 48 cubic meters of concrete is still visible on the Orphan Property, Quebec was reckless, grossly negligent, irrational, intentional and in bad faith in failing to order proper inspection and remediation;
  - iii. The MELCC noted that geotextile or other protective barriers between the contamination on Lot 1 250 042 and the proximate land and water were lacking, yet failed to take any reasonable measures to implement these solutions;
  - iv. Having discovered the considerable environmental testing performed on Lot 1 250 042, it was incumbent upon the MELCC to follow up on the contaminated lot. Had they done so the MELCC would have read in the 2013 Spectrum report that the first 2 meters of soil on property consisted of cement and asphalt waste;

- v. Despite the access to the multiple environmental reports conducted by environmental groups and the MELCC itself, Ms. Wrangler concluded that the contamination to be minor, inconsequential, and posed no risk to human health or adjacent waterways. She concludes that it poses no risk to human health because the property is located in a commercial and industrial zone, disregarding that homes are found in less than 1 kilometer from Lot 1 250 042. Her claim that there are no adjacent waterways is equally erroneous, given that that Pinel stream is within 600 meters of the lot as noted by the MLCC in their review of the application to develop the property;
55. Quebec was reactive only and never took positive steps to monitor and assess the source of the contamination on Lot 1 250 042 or remediate the property;
- i. The MELCC only visited Lot 1 250 042 when citizens raised concerns about the illegal activities taking place on the property, and even then, it could take the MELCC over a year to investigate the complaints (**Exhibit R-3** at pages 45-60);
  - ii. The MELCC did not follow up on their inspections pursuant to citizen complaints of asphalt and concrete dumping;
  - iii. None of the Notices of Non-Conformity issued by the MELCC resulted in any tangible action by the operators or owners of Lot 1 250 042, yet the MELCC only responded with providing two \$5,000 fines which were never paid;
  - iv. The MELCC took no further actions to ensure that *any* toxic waste was safely removed or that the property was remediated;
  - v. Despite having refused the requests by Cosmopolitain Construction Ltd. and JESKAR given the faulty and incomplete nature of their Environmental Audit Reports, the MELCC never took any positive steps to properly investigate the property and ensure its proper rehabilitation;
  - vi. Despite being listed as a contaminated terrain on July 19, 2018, the province has done nothing to identify, monitor, curtail or remediate the contamination plumes, it has not indicated the change in ownership in the property, and continues to ignore the hazardous waste dump, including the origin of the emissions contaminating land, air and water;

- vii. The contamination on Lot 1 250 042 is active, in the sense of autonomous things, since it moves to the Applicants' and members properties and to the environment. Defendant Quebec have the ability and obligation to exercise real control and power over the pollution on Lot 1 250 042 through regulations and enforcement. Their failure to effectively enforce environmental regulations and end the contamination of the property has resulted in an unreasonable annoyance and environmental prejudice caused by the escape of emissions from the Orphan Lot;
  - viii. There is no indication that the MELCC has, since April 25, 2019, communicated with 9380-9663 Quebec Inc., the legal owner of Lot 1 250 042, to ensure that the company has complied in safely removing the 2,870 cubic meters of residual matter on its property;
  - ix. Until December 1, 2021, when the Applicants began a legal action against Quebec, the MELCC had taken no tangible actions to assess, monitor or rehabilitate the property;
  - x. By 2018, with Ms. Houde's 2018 report, the Province knew (i) the extent of the contamination on Lot 1 250 042 and the danger it posed for surrounding land, water and air, (ii) the required steps needed to rehabilitate Lot 1 250 042 and avoid further environmental contamination, and (iii) that the owners of the property, Placements 4C Inc., had no intention to remediate the property;
56. Quebec has also failed to stop the continued illegal contamination of Lot 1 250 042 since 2016 with more hazardous materials;
- i. The recent above ground contamination on Lot 1 250 042 mostly occurred during a nine-month period from June 27, 2017 to March 28, 2018, see **(Exhibit R-15 and R-16)**;
  - ii. Had the MELCC properly inspected both properties, the huge above ground dumping of asphalt and concrete waste between June 27, 2017, and March 28, 2018, would not have occurred;
  - iii. In so doing from at least 2016, the injunctive relief sought in these proceedings would have been ordered by the MELCC and representatives as well as class members would not have been exposed to the emissions

described herein nor would they have suffered latent and undiagnosed health damages and the stress which they allege. This would also have met their obligation to protect the public air, land, wetlands and biodiversity;

***The Province of Quebec's Attempts to Disguise the Contamination of Lot 1 250 042***

57. Applicants submit that having full knowledge of the extent of the contamination on Lot 1 250 042, Quebec attempted to disguise the environmental catastrophe on the property by seeking to redevelop the land;
58. Communication from 2018 indicates that Mr. Peyrat was in open communication with Placements 4C Inc. and Groupe ABS about the possibility of redeveloping Lot 1 250 042 into a recycling facility ("the Brownfield development");
59. Mr. Peyrat considered this development despite knowing the extent of the soil contamination which needed to be remediated, the severe hydrocarbon contamination in the soil and groundwater and that the water quality testing carried out by Groupe ABS in 2016 intentionally did not properly represent the extent of the pollution;
60. As the Province realized the extent of the contamination on Lot 1 250 042, it decided that the property could not be redeveloped and, rather than undertaking its obligations to rehabilitate the land and protect its citizens and environments, it decided to turn a blind eye to the problem;
61. Additionally, several crucial documents were not provided to Applicants via their access to information request which is recklessness;
62. The documents which were not disclosed following the access to information request include:
  - i. Email from Mr. Peyrat to Ms. Houde dated April 11, 2018 with the subject line: "Ancien dépotoir d'un incinérateur de la Ville (sic) de Montréal – Avis de la DPRILC",
  - ii. Email to Mr. Peyrat dated April 6, 2018 with the subject line: "résidus d'incinération",
  - iii. Schematic titled "Terrain – Futur parc Marien" produced by Lavalin on February 26, 1990,

**c) The City of Montreal's Knowledge and Actions Regarding Lot 1 250 042**

***The City of Montreal Knew of the Contamination of Lot 1 250 042***

63. The City of Montreal was also aware of the contaminated status of Lot 1 250 042, since the site had served as a sanitary incineration waste site in the 1960s;
64. Additionally, the City of Montreal was aware of the existence and previous history of Lot 1 250 042 since on August 18, 2010 the the Montreal Executive Committee voted to locate "infrastructure de traitement des matières organique" on the Orphan Property (**Exhibit R-17**);
65. The final decision of the City not to use the property as a composting facility is most likely based on the City's knowledge of the extent of the contamination on Lot 1 250 042;
66. Moreover, in 2020 and 2021 the municipal evaluation of the property decreased by 89% after the sale of Lot 1 250 042 to 9380-9663 Quebec Inc. In 2018 and 2019, the property was evaluated at \$1,834,900, yet in 2020 and 2021 its evaluation was reduced to \$206,800. Significantly, the 2019 Deed of Sale declared that the property contained hazardous waste. This Honourable Court must conclude based on the presumption of this serious, precise and concordant evidence that such a drastic reduction in the municipal evaluation of the property indicates that the City was aware of the contamination on Lot 1 250 042 (**Exhibit R-18/R-18A, R-18B, R-18C, R-18D**);

***The City of Montreal Failed to Mitigate the Contamination of Lot 1 250 042***

67. Applicants submit that there is no known evidence that the City of Montreal has ever attempted to rehabilitate Lot 1 250 042, despite their knowledge of the contamination present on the property dating back to the 1960s;
68. The City also failed to list or publish the contamination of the property on any database or register available to the public or force the owner to identify the property as polluted;
69. The pollution emanating from Lot 1 250 042 has dramatically reduced the quality of life and enjoyment of property of those living near its facilities. Faulty zoning should be seen as contributing to this harm as should failing to enforce municipal law and provincial law;

70. Despite being aware of the contamination of Lot 1 250 042 since 1968 when the municipal dump facility closed, the City of Montreal took no action to remediate the clearly contaminated property and permitted the contaminated property to clearly contaminated property to did nothing to remediate the property. Failing to enforce environmental regulations combined with zoning a residential area so nearby a toxic dump should be seen as manufacturing an intolerable neighbourhood annoyance;

***The City of Montreal's Attempts to Disguise the Contamination of Lot 1 250 042***

71. Like the Province of Quebec, the City of Montreal has attempted to redevelop Lot 1 250 042 without making any attempts to remediate the contaminated soil;
72. In the 1970s, the City adopted resolutions to establish a municipal waste site on the property, yet this project was later abandoned;
73. Applicants submit to the Court that the City abandoned this project when it became aware of the extent of the contamination found on Lot 1 250 042 and decided to ignore the problem, rather than taking decisive action to rehabilitate the property;
74. A similar situation arose in 2010, when the Montreal Executive Committee considered repurposing Lot 1 250 042 into a composting facility but soon relinquished the idea;
75. Given the extreme levels of contamination present on Lot 1 250 042, it is highly probable that the City's decision not to use the property was based on the amount of work it would require;

**d) The Effects of the Contamination on Lot 1 250 042**

76. The documented contamination on Lot 1 250 042 is extremely harmful to any and *all* living creatures in Riviere-des-Prairies, as well as to the land, air and water systems surrounding the property;
77. The area surrounding Lot 1 250 042 is known to be inhabited by deer (see **Exhibit R-19/Exhibit R-19A, R-19B, R-19C, R-19D, and Exhibit R-19E**), wild turkey, groundhogs, snakes and other domesticated animals who drink from the natural stream nearby the property and inhabit the surrounding natural areas;



78. The pollution from Lot 1 250 042 is transported by the wind to the surrounding area of the property, causing neighbours to suffer an abnormal, excessive and unreasonable neighbourhood annoyance;
79. The main contaminants on Lot 1 250 042 are large piles of asphalt, cement tailings and other construction debris, which have continued to increase dramatically since 2016;
80. Many environmental reports also confirm that Lot 1 250 042 is contaminated with dangerous levels of dioxins, furans, petroleum components C10 and C50, PCBs, PAHs and heavy metals, including lead, cadmium and zinc;
81. Given that the Defendants have taken no action to enclose, cover or water down the piles of debris containing hazardous materials, particulates of the contaminants are transported by the wind to nearby residential homes;
82. Exposure to asphalt pollution (VOCs, PAHs, heavy metals including lead) in humans and fauna results in respiratory irritation leading to chronic bronchitis and reduced lung function and heart disorders. Additional epidemiological proof will be advanced on the Merits to indicate signature additional diseases caused and better describe the class of victims for each contaminant-related illness. Toxin inhalation is a clear and present health danger to inhabitants of Rivieres-des-Prairies, and the cost of mitigation and monitoring should be borne by the Defendants due to their recklessness and gross negligence (**Exhibits R-20 and Exhibit R-21**);
83. Exposure to cement dust to both humans and fauna “has been known to precede a number of systemic injuries with particular reference to the respiratory, gastrointestinal, and integumentary systems characterized by fibrosis, emphysema, cough, cancer, inflammation, and liver diseases”, see (**Exhibit R-22**);
84. Additionally, the large piles of cement and bricks on Lot 1 250 042 raises the serious concern that residents and fauna are exposed to PM4 Crystalline Silica, a common mineral used to make glass, ceramics, bricks, concrete brick and mortar. Exposure to PM4 Crystalline Silica often results in both respiratory and non-respiratory health effects. Of the respiratory effects, Silicosis leads to Pneumoconiosis. It is recognized that there are links between PM4 Crystalline Silica exposure and other health concerns, including, rheumatoid arthritis, Scleroderma, Sjogren’s Syndrome, Lupus and Renal Disease. PM4 Crystalline

Silica dust is also classified as a known human carcinogen, most often causing lung cancer. Health risks, including diseases that are latent, to humans and fauna, including silicosis, COPD, lung cancer, renal toxicity, increased risk of tuberculosis and autoimmune diseases. The latency periods, epidemiological and biological proof of the health effects in populations exposed to PM-4 Crystalline silica are indicated in *Toxicological Profile for Silica, ATSDR 2019* (**Exhibit R-23**);

85. Moreover, the contamination on Lot 1 250 042 has extremely detrimental effects on the groundwater, water systems and nearby wetlands. The ensemble of the environmental reports produced on Lot 1 250 042 conclude that the hazardous waste on the property is leaching into the groundwater, surrounding wetlands and waterways;
86. Nearby waterways include the Pinel conservation area, wetlands protected by Ducks Unlimited Canada and MDDELCC 2016, Park des Cageux, (**Exhibit R-5**), the Pointe aux Prairies Nature Park (**Exhibit R-6**), Marais du parc de conservation du ruisseau de Feu, (**Exhibit R-7**) and the five protected islands of the Mitan Archipelago (**Exhibit R-8**) and the Riviere des Prairies (pages 4 and 5) from aquifer on the Orphan Property;
87. The contamination of the public water is extremely hazardous for the wellbeing of the environmental system and all the fauna who rely on these sources of water. The Defendants' have thus demonstrated a disregard for the animals' welfare and safety, and causing them suffering, acute pains, and extreme anxiety;
88. The Defendants condoned the neglect of animals and permitted the pollution to their habitat causing them undue pain, injury or suffering, in a manner wholly inconsistent with proper biological diversity and in breach of applicable Animal Rights Protection Legislation;
89. The Defendants' failure to curtail the emissions of petroleum components, dioxins, furans, heavy metals and other carcinogenic and hazardous elements into the groundwater, wetlands and surrounding water system in flagrant breach of the Public/Environmental Trust, Article 913 C. C. Q., the *Act to confirm the public nature of water resources and to promote better governance of water and associated environments*, Articles 1 and 46.1 of the Quebec *Charter* and the *Environment Quality Act*;
90. Specific facts pursuant to applicant Elayne Lemieux:

- i. Ms. Lemieux has resided in Riviere-des-Prairies since 2013 and intends to remain at her residence;
- ii. She lives within 1.3km of the contaminated Lot 1 250 042, her address being 12530 70e avenue, Riviere-des-Prairies;
- iii. She has noticed the unreasonable amount of dust in her area;
- iv. Her home needs daily dusting and cleaning due to the extreme amount of dust;
- v. She is a runner and on some days she can feel the dust, experiencing it as a heaviness in her lungs and causing difficulty breathing. She needs to reduce her exercise on days of heavy contamination;
- vi. She has a multitude of health problems. These included fibroids which necessitated a hysterectomy, heart problems, thyroid problems and asthma. Her conditions are aggravated and negatively affected by dust contamination. The doctors are unable to identify why the fibroids developed, but they say environmental conditions may have played a factor;
- vii. She suffers extreme stress and worries about exactly how the unreasonable toxic dust, and contaminated water and fauna is affecting and aggravating her health conditions, existing and latent health effects, due to this pollution;
- viii. She is worried about the contamination because her family has a history of cancer, causing here extreme stress and making her a likely candidate of latent yet not fully diagnosed health damages;
- ix. She is concerned about what impact ground water contamination may have on her drinking water, causing her extreme stress;
- x. She is concerned that the dogs drink from streams and puddles and that ground water contamination will have a health impact on them;

91. Specific facts pursuant to the Wiener dogs:

- i. The Wiener dogs, Bart, Raymond, Marquez and Asa, reside with Ms. Lemieux within 1.3km of the contaminated Lot 1 250 042, their address being 12530 70e avenue, Riviere-des-Prairies;
  - ii. Ms. Lemieux runs a Wiener dog rescue out of her home and she worries about the impact of the dust is having on her rescue animals;
  - iii. The Wiener dogs' daily running/walking route is through the area polluted by Lot 1 250 042 (**Exhibit R-24**);
  - iv. The Wiener dogs should not be forced to take inferior walking/running routes because the City of Montreal and the Province of Quebec are permitting the pollution of the neighbourhood;
  - v. One of the dogs has severe respiratory problems and the veterinarian says it could be caused by environmental contaminants. Medication has been unable to resolve the problem;
  - vi. Her backyard is equipped to exercise and train her Weiner dogs but is constantly subjected to unreasonable dust contamination, in particular in the summer and fall;
  - vii. The Weiner dogs are particularly sensitive to environmental issues;
  - viii. They are a sentinel species, a domesticated animal, with biological needs, thus well placed to represent flora, fauna and biodiversity in Riviere-des-Prairies, its environs and watershed;
92. In addition, Ms. Lemieux has observed many fauna in her area including deer, racoons, geese, skunks, ground hogs and squirrels. She worries about what the contamination from Lot 1 250 042 and ground water pollution is doing to the fauna in her area;

## **II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 CCP)**

### **A. CLASS MEMBERS' CLAIMS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT (SECTION 575(1) CCP)**

93. The identical, similar or related questions of law or fact between each member of the class and the Defendants which Applicants wish to have decided by the class action are:
- i. Whether the Defendants were at fault in not taking sufficient measures to assure that the contamination of Lot 1 250 042 was properly mitigated and the property was rehabilitated;
  - ii. Whether the Defendants intentionally, recklessness, willfully, wantonly, maliciously, grossly and negligently failed to investigate, monitor, audit, sanction and effectively enforce the environmental legislation which it is obliged to uphold as concerns Lot 1 250 042;
  - iii. Whether the Defendants owned any duties to the Applicants or to the public through the Public/Environmental Trust;
  - iv. Whether the Defendants breached their duties regarding the Public/Environmental Trust;
  - v. Whether the Defendants' failures to mitigate the pollution on Lot 1 250 042 constituted in the appropriation of the air or water contrary to Article 913 CCQ;
  - vi. Whether the pollution described herein contravenes Article 20 of the *Environmental Quality Act* and the Preamble, Articles 1 and 2 of *An Act to Affirm the Collective Nature of Water Resources and to Promote better Governance of Water and Associated Environments* c. C-62;
  - vii. Whether the pollutants resulting from the Defendants' actions and omissions constitute "contaminants," "pollutants" and/or "hazardous material" within the meaning of Article 1 of the *Environmental Quality Act*;
  - viii. Whether the Defendants are liable for the autonomous act of things under their control;
  - ix. Whether the faults or omissions of the Defendants caused damages to the Applicants;
  - x. Whether the pollution permitted on Lot 1 250 042 and its effects on all residents of Rivière-des-Prairies and the nearby water constitute a

neighbourhood annoyance beyond the limits of tolerance within the meaning of Article 976 CCQ and whether the Defendants created this neighbourhood annoyance;

- xi. Whether the City of Montreal was at fault or negligent when they permitted residential zoning and development in close proximity to Lot 1 250 042, a former municipal dump site;
- xii. Whether the inconvenience, discomfort, stress, economic and health problems that are suffered by each of the members of the class were caused and/or created as a result of the Defendants' pollution;
- xiii. Whether the pollution caused increased health problems, including stress;
- xiv. Whether the Defendants' pollution was intentional and whether punitive, exemplary damages should be awarded pursuant to Article 49 of the *Quebec Charter*;
- xv. Whether the Defendants committed willful errors, acts and omissions with regard to environmental protection;
- xvi. Whether as a result of *Charter* breaches, including Articles 1, 6, 7 and 46.1, moral and material damages are due by operation of Section 49 of the *Charter of Human Rights and Freedoms* for unlawful and intentional breaches of fundamental Charter rights;
- xvii. Whether Applicants and each members of the class have a right to claim damages, including moral, exemplary and *Charter* damages from the Defendants;
- xviii. Whether and to what extent the Defendants' pollution were dispersed over the class area;
- xix. The proper measure of damages incurred by Applicants and the class;
- xx. Whether Applicants and class members are entitled to injunctive relief, and if so, what relief;

**B. THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT (SECTION 575(2) CCP)**

94. Applicants submit that the actions and omissions of Quebec and the City of Montreal are intentional, inexplicable, unjustifiable, constitute gross negligence and amount to fraud;
95. Applicants have demonstrated that both the Province of Quebec and the City of Montreal were aware of the contamination found on Lot 1 250 042 dating back to the 1960s, yet properly monitor and list Lot 1 250 042 on the contaminated soil industrial landfill site, which was necessary pursuant to its use as a waste site, constitutes a gross fault giving rise to liability;
96. Defendant Quebec's failure of surveillance and oversight is shocking and incomprehensible given the risk and damage these emissions cause class members groundwater, wetlands, biodiversity, flora and fauna, which constitutes negligence. This is all the more the case given the extremely close proximity of Lot 1 250 042 to residents;
97. Moreover, Quebec's failure to enforce best practices for these operations and on the Orphan Property constitutes gross negligence, is irrational and, in all probability, and by necessary inference, fraudulent, intentional and in bad faith;
98. Having control of the Orphan Property and failing to curtail the unreasonable annoyance and environmental prejudice caused by the escape of emissions from it, Quebec is a neighbor causing annoyance to representatives and class members as well as for things under its control;
99. Quebec is in flagrant breach of Section 10 the *Act Respecting the Ministère du Développement Durable, de l'Environnement et des Parcs* c. M-30.001;

The Minister is responsible for the protection of the environment and for seeing to natural heritage conservation, *in particular to maintain the ecological functions of the ecosystems* that constitute that heritage.

The Minister shall also *ensure the protection, sustainable use, and supervision of the* protected areas under the Minister's responsibility as well as of the other environments that benefit from special conservation measures, in particular wetlands and bodies of water. [emphasis added]

100. That provision obliges Defendant Quebec to both protect and supervise wetlands and bodies of water, which they have woefully neglected to do. This Honorable

Court, with respect, should order Defendant Quebec to *immediately* comply with those environmental protection and sustainability obligations and curtail ongoing contamination of land, wetlands, air and water as described herein, consistent with the Public/Environmental Trust;

101. Defendants have breached the Public/Environmental Trust doctrine by contaminating public lands, air and water including the Golf Club de L'isle de Montreal golf course, Parc Marie Le-Franc, Parc de la Coulee-Grou, Parc Yves-Therault, Parc Armand-Vanasse, Parc-Nature Pointe-au-Prairies, Ruisseau du Pinel Conservation area, the Mitan Archipelago, parc des Cajoux, L'Ile Bourdon Nature Park, wetlands protected by nature Conservancy Quebec the foreshore, and the atmospheric Public/Environmental Trust right to clean air.
102. As the pollution concerns air and water, this constitutes an appropriation within the meaning of Article 913 CCQ;
103. As concerns water, it is a breach of the Preamble, and section 1 and 3 of the *Act to Confirm the Collective Nature of Water Resources and to Promote Better Governance of Water and Associated Environments*;
104. Defendant Quebec is liable under Article 1457 of the CCQ for its inaction, failure to inspect Lot 1 250 042 and the failure to order remediation and corrective measures on both properties. The failure to properly inspect, sample soil and water and order corrective measures and remediation of both properties is intentional, irrational and constitutes gross negligence;
105. The Defendants' repeated faults under Article 1457 CCQ cause continuing bodily, moral and material injury including damage to property, health damages including fatigue and stress and damage to the environment for which reparation is due;
106. Defendants are liable under the regime of 1465 C.C.Q. for the prejudice caused by the autonomous act of the piles of concrete and asphalt and contaminated groundwater. Defendants exercise real power and control over these pilings and contaminated groundwater and are therefore the guardians of them.<sup>2</sup> The piles and groundwater are autonomous things, as they are not directly directed by a person<sup>3</sup> and caused prejudice to the Applicants. In doing so, they were active, in

---

<sup>2</sup> *Les Fumoirs Mouski inc c MRC de la Mitis*, 2017 QCCA 205, at para 17.

<sup>3</sup> Jean-Louis Baudoin, *La Responsabilité Civile*, 9th ed (Montreal: Éditions Yves Blais, 2020) at page 534, para 1-439.1.



the sense of autonomous things, since they moved to the Applicants' properties and to protected land and water. As guardians of the piles and water, Defendants were obliged to prevent them from causing harm to others and the environment, including by their autonomous act, by maintaining them and incorporating safeguards to stop wind or water carrying contamination to the surrounding area. Defendants failed to take all reasonable steps to do so and are consequently presumed liable;

107. Defendant City of Montreal controlled zoning around Lot 1 250 042 and was responsible for the urban planning of the area. They failed to remediate the contamination of the property after the municipal dump was closed in 1968 and thereafter recklessly permitted the development of the nearby area as residential housing;
108. The class members are entirely justified in having the damages immediately curtailed. The injunctive relief set out herein is warranted, in the public interest, and in the interest of future generations, especially considering the precautionary principle and the environmental Trust Prejudice, as the damage alleged herein is impossible to reverse and becomes worse over time;
109. It is in the interest of justice, proportionality, fairness and the precautionary principle that collective recovery and the amount to be awarded each individual member be assessed using an average determined for each zone or sub-group. Sub-groups will be determined using a point system weighing concentration of emissions per year, number and extent of exposures, the susceptibility of the victims, suffering caused by pollution, and the parties' patrimonial position (Art. 1621 C.C.Q.);
110. The environment bears a disproportionate share of the emissions as Defendants are atrocious stewards of the environment, its flora and fauna, and in particular as concerns wetlands and waterways, which are crucial to protection and biodiversity, as will be proven at trial;
111. Injunctive relief is supported by s. 49 of the Quebec *Charter*, as stated above, by *EQA* arts. 19.1-19.7 and by *CCP* arts. 509 to 511. The Court is justified in ordering the lining, covering and watering of all piles, lowering pile height to 15 meters or below and installing proper fencing. As well, it should order remediation of Lot 1 250 042, all wetlands, waterways, or any other component of this watershed and remediate the Orphan Property in every manner;

**C. COMPOSITION OF THE CLASS RECOMMENDS A CLASS ACTION  
(SECTION 575(3) CCP)**

112. The composition of the class makes the application of Articles 91 or 143 of the *Code of Civil Procedure* difficult or impractical because:

- i. The number of physical persons affected, at least 102,000, 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;
- ii. 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;
- iii. 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;
- iv. 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.*,<sup>4</sup> 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 As concerns neighborhood annoyance without fault, *Drysdale vs Dugas and St. Lawrence Cement vs Barrette* recommend a collective action;
- v. Moreover, due to the significant experts' costs associated with the litigation of this matter, as indicated in **Exhibit R-25**, it is in the best interests of each of the members of the Class, and of justice, that the institution of a class action be authorized.

---

<sup>4</sup> 1990 CanLii 3338 (QCCA), [1990] R.J.Q. 665.

- vi. As concerns flora and fauna, the Weiner dogs, a sentinel, and domestic species, are appropriate and representative of the sub-group;

**D. CLASS MEMBERS APPOINTED AS REPRESENTATIVE PLAINTIFF'S ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS (SECTION 575(4) CCP)**

113. The Applicants request that they be ascribed the status of Representatives;

114. The Applicant Elayne Lemieux is in an adequate position to represent the members of the class who are owners and tenants, for the following reasons:

- i. She and the Weiner dogs live in a neighbourhood directly affected by the PM-4 silica, heavy metals, petroleum components and resulting pollution described herein and have been a victim of the pollution for over three years;
- ii. Ms. Lemieux has taken numerous steps to acquaint herself 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 the neighbourhood identified under the description of class presented above;
- iii. Ms. Lemieux 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;
- iv. She has acquainted herself with the concerns of each of the Representatives and has been present and involved at every stage of the proceedings;
- v. She has no conflict of interest with the class members;

115. The Wiener dogs, Bart, Raymond, Asa and Marquez, are in a position to faithfully and properly represent the animals affected by the pollution for the following reasons:

- i. The Weiner dogs live in a neighbourhood directly affected by the PM-4 silica, heavy metals, petroleum components and resulting pollution

described herein and have been victims of the pollution for over three years;

- ii. They are particularly sensitive to environmental issues. They are a sentinel species, a sentient domesticated animal with biological needs and well placed to represent flora, fauna and biodiversity in Riviere-des-Prairies, its environs and watershed;
- iii. They have no conflict of interest with the class members;

### III. CONCLUSIONS SOUGHT

116. The conclusions that Applicants wish to introduce are:

- i. **GRANT** the Applicant's action against the Defendants;
- ii. **GRANT** the Collective Action of Applicants for all class members;
- iii. **ISSUE** an interlocutory and permanent injunction ordering the Defendants to take immediate steps to protect the Public/Environmental Trust lands, wetlands and waters in and around the identified zone;
- iv. **ORDER** the Defendants to, within three (3) months, remediate at their expense all environmental damage caused by the pollution on Lot 1 250 042 or acts of things under their control to residences, flora, fauna, the watershed, Public/Environmental Trust lands, wetlands and waters in and around the identified zone;
- v. **CONDEMN** Defendants to pay each class member on average \$1,300 per year from 1968 (Montreal) and 2003 (Quebec) or such other sum as this Court finds appropriate for neighbourhood annoyance, damages and nuisance;
- vi. **CONDEMN** Defendants to pay each class member on average \$9,000 or such other sum as this Court finds appropriate for moral damages including stress and inconvenience;
- vii. **CONDEMN** Defendants to pay \$1,300 in punitive damages per class member;

- viii. **CONDEMN** Defendants to pay ten (10) million dollars to test and monitor the emissions described herein and order the results be made available to the public and Class Member's Experts in real time;
- ix. **APPLY** the precautionary principle to the legislation, regulation, abatement and remediation of the resulting pollution in Riviere-des-Prairies;
- x. **ORDER** the collective recovery of said damages;
- xi. **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;
- xii. **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
- xiii. **ORDER** all costs of publication be borne by Defendants;
- xiv. **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;
- xv. **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.
- xvi. **MAKE ANY OTHER ORDER** this Honourable Court deems appropriate;
- xvii. **THE WHOLE** with costs, including all extrajudicial costs and disbursements, including expert costs.

#### **IV. PRESCRIPTION**

- 117. In the present case, the Defendants should not be entitled to claim the benefit of prescription because their actions were reckless and grossly negligent;
- 118. Applicants submit that since about February 13, 2003, when Cosmopolitain Construction Ltd. was charged with committing an infraction against the

*Environmental Quality Act*, the Province of Quebec has been aware of the contamination on Lot 1 250 042. Applicants presume that these infractions were given to the company due to their actions on the property and thus demonstrate the Province of Quebec's knowledge since at least early 2003;

119. Since 2003, the Province of Quebec has recklessly failed to effectively deal with the dangerous contamination on Lot 1 250 042 and failed to take any successful steps to remediate the property, to list the site as contaminated, or take any measures to protect the public, the environment, or Watershed;
120. Applicants submit that since January 1, 1968, when the municipal dump was closed, the City of Montreal has been aware of the pollution of on Lot 1 250 042 and has recklessness failed to take any steps to remediate the property, to list the site as contaminated, or take any measures to protect the public, the environment, or Watershed;
121. As decided in *Finney v. Barreau du Québec*,<sup>5</sup> rebutting the general presumption of good faith in art. 2805 CCQ does not require intentional fault. On the contrary, "recklessness implies a fundamental breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed."<sup>6</sup> Bad faith can thus be presumed where gross or serious recklessness is proved, for "gross or serious carelessness is incompatible with good faith."<sup>7</sup>
122. Environmental class actions<sup>8</sup>, like the professional orders addressed in *Finney*, have protection of the public as one of their primary purposes. They exist in part to promote access to justice and to modify harmful behavior,<sup>9</sup> so, just as in *Finney*, it would be contrary to the fundamental objective of protecting the public if evidence of malice or intent to harm were required in order to rebut the presumption of good faith;<sup>10</sup>
123. The actions of the Province of Quebec and the City of Montreal either directly demonstrate bad faith or constitute serious recklessness to the point that bad faith can be presumed. In particular, the efforts of the Province of Quebec to

---

<sup>5</sup> 2004 SCC 36 (CanLII), [2004] 2 SCR 17

<sup>6</sup> *Ibid* at para 39.

<sup>7</sup> *Ibid* at para 40.

<sup>8</sup> *Carrier c Quebec*, 2012 QCCA 1654.

<sup>9</sup> *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1 at para 1.

<sup>10</sup> See *Finney*, at para 40:

"it would be contrary to the fundamental objective of protecting the public set out in s. 23 of the *Professional Code* if this immunity were interpreted as requiring evidence of malice or intent to harm in order to rebut the presumption of good faith."

disguise the contamination and redevelop Lot 1 250 042 without remediating it, as detailed above as para 56ff, show either bad faith or serious recklessness;

124. Furthermore, as noted in the Court of Appeal *Finney*<sup>11</sup> regarding the Barreau du Quebec: “L’inaction du Barreau équivaut à un refus de donner suite à sa mission. Ce manquement constitue une faute civile dont il doit répondre.” The Defendant municipality and Province’s choices to refuse to address a clear environmental crisis of which they were fully aware constitutes a refusal to fulfill their administrative functions which should also be seen as serious recklessness justifying a presumption of bad faith.
125. The Honourable Court ought to apply the principle *fraus omnia corrumpit* (fraud unravels all) which extends prescription where Defendants have intentionally or by gross negligence, and/or fraudulently failed to disclose or cover up their liability for the damages claimed<sup>12</sup>;
126. Applicants reserve the right to amend and bifurcate the prescription for the Province of Quebec and the City of Montreal as more facts come to light about the knowledge and actions of either Defendant;

## **V. JURISDICTION**

127. The Applicants request that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
  - i. The Defendants allowed pollution in Riviere-des-Prairies, Montreal, Quebec;
  - ii. The pollution complained of that caused harm suffered by the Applicants and the other class members was carried out in the Province of Quebec;
  - iii. Applicants as well as the members of the class which they represent all reside in Montreal, Quebec;
  - iv. There exists no better suited forum or district to render justice in the present dispute;

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

---

<sup>11</sup> *Finney*, at para 42.

<sup>12</sup> Lord Denning in *Lazarus Estates Ltd. v Beasley*, [1956] All. E.R. 341 at 345.

**GRANT** the present Application;

**APPOINT** the Applicants the status of representative plaintiffs of the persons included in the Class herein described as:

All Quebec residents, be they moral or physical persons, including owners, tenants or subtenants of immovable property, and all domesticated animals who resided in the Borough of Riviere des Prairies, Quebec for any period between January 1, 1968 for the City of Montreal and February 13, 2003 for the Province of Quebec and the date on which this action is authorized;

Comprised of the following sub-classes:

- i) Persons who have owned or rented property in Riviere-des-Prairies, Quebec since January 1, 1968;
- ii) Persons who have suffered or are likely to suffer health damages due to the pollution emanating from Lot 1 250 042, including increased stress;
- iii) Any person or animal wishing to invoke the Public/Environmental Trust doctrine against the Province of Quebec for their failure to protect the public's right to pristine public air, water and land in their management of Lot 1 250 042;
- iv) Any person seeking to represent the interests of domesticated animals residing in Riviere-des-Prairies, Quebec for any period between January 1, 1968 for the City of Montreal and February 13, 2003 for the Province of Quebec and the date on which this action is authorized;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

Whether the Defendants were at fault in not taking sufficient measures to assure that the contamination of Lot 1 250 042 was properly mitigated and the property was rehabilitated;

Whether the Defendants intentionally, recklessness, willfully, wantonly, maliciously, grossly and negligently failed to investigate, monitor, audit, sanction and effectively enforce the environmental legislation which it is obliged to uphold as concerns Lot 1 250 042;



Whether the Defendants owned any duties to the Applicants or to the public through the Public/Environmental Trust;

Whether the Defendants breached their duties regarding the Public/Environmental Trust;

Whether the Defendants failures to mitigate the pollution on Lot 1 250 042 constituted in the appropriation of the air or water contrary to Article 913 CCQ;

Whether the pollution described herein contravenes Article 20 of the *Environmental Quality Act* and the Preamble, Articles 1 and 2 of *An Act to Affirm the Collective Nature of Water Resources and to Promote better Governance of Water and Associated Environments* c. C-62;

Whether the pollutants resulting from the Defendants' actions and omissions constitute "contaminants," "pollutants" and/or "hazardous material" within the meaning of Article 1 of the *Environmental Quality Act*;

Whether the Defendants are liable for the autonomous act of things under their control;

Whether the faults or omissions of the Defendants caused damages to the Applicants;

Whether the pollution permitted on Lot 1 250 042 and its effects on all residents of Riviere-des-Prairies and the nearby water constitute a neighbourhood annoyance beyond the limits of tolerance within the meaning of Article 976 CCQ and whether the Defendants created this neighbourhood annoyance;

Whether the City of Montreal was at fault or negligent when they permitted residential zoning and development in close proximity to Lot 1 250 042, a former municipal dump site;

Whether the inconvenience, discomfort, stress, economic and health problems that are suffered by each of the members of the class were caused and/or created as a result of the Defendants' pollution;

Whether the pollution caused increased health problems, including stress;

Whether the Defendants' pollution was intentional and whether punitive, exemplary damages should be awarded pursuant to Article 49 of the *Quebec Charter*;

Whether the Defendants committed willful errors, acts and omissions with regard to environmental protection;

Whether as a result of *Charter* breaches, including Articles 1, 6, 7 and 46.1, moral and material damages are due by operation of Section 49 of the *Charter of Human Rights and Freedoms* for unlawful and intentional breaches of fundamental Charter rights;

Whether Applicants and each members of the class have a right to claim damages, including moral, exemplary and *Charter* damages from the Defendants;

Whether and to what extent the Defendants' pollution were dispersed over the class area;

The proper measure of damages incurred by Applicants and the class;

Whether Applicants and class members are entitled to injunctive relief, and if so, what relief;

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

**GRANT** the Applicant's action against the Defendants;

**GRANT** the Collective Action of Applicants for all class members;

**ISSUE** an interlocutory and permanent injunction ordering the Defendants to take immediate steps to protect the Public/Environmental Trust lands, wetlands and waters in and around the identified zone;

**ORDER** the Defendants to, within three (3) months, remediate at their expense all environmental damage caused by the pollution on Lot 1 250 042 or acts of things under their control to residences, flora, fauna, the watershed, Public/Environmental Trust lands, wetlands and waters in and around the identified zone;

**CONDEMN** Defendants to pay each class member on average \$1,300 per year from 1968 (Montreal) and 2003 (Quebec) or such other sum as this Court finds appropriate for neighbourhood annoyance, damages and nuisance;

**CONDEMN** Defendants to pay each class member on average \$9,000 or such other sum as this Court finds appropriate for moral damages including stress and inconvenience;

**CONDEMN** Defendants to pay \$1,300 in punitive damages per class member;

**CONDEMN** Defendants to pay ten (10) million dollars to test and monitor the emissions described herein and order the results be made available to the public and Class Member's Experts in real time;

**APPLY** the precautionary principle to the legislation, regulation, abatement and remediation of the resulting pollution in Riviere-des-Prairies;

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

**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 Defendants;

**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.

**MAKE ANY OTHER ORDER** this Honourable Court deems appropriate;

**THE WHOLE** with costs, including all extrajudicial costs and disbursements, including expert costs.

**MONTREAL**, this 22nd day of August, 2022

---

**Mtre. Charles O'Brien**  
**Attorney for the Applicants**  
**LORAX LITIGATION**

NOTICE TO DEFENDANTS  
(Art. 119 C.C.P.)

**TAKE NOTICE** that the Petitioners have filed this Amended 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 motion.

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 Amended Application, Petitioners allege the Exhibits, referred to in the links in the proceedings and provided on the attached 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 22nd day of August, 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)*

**Exhibit R-0 (i) to (xiii)**

- (i) Stone, Christopher Should-trees-have-standing? 1972
- (ii) Sierra Club v. Morton 405 U.S. 727 (1972)
- (iii) Uniroyal Chemical Ltd. 1992

- (iv) *Reece v Edmonton (City)*, 2011
- (v) Don't Think about Elephants *Reece v City of Edmonton* 2012
- (vi) Opportunity Lost The Supreme Court Misses a Historic Chance to Consider Question 2012
- (vii) New legal rights for rivers – Global Water Forum Nov 2017
- (viii) Now rivers have the same legal status as people, we must uphold their rights \_ Global Development Professionals Network \_ The Guardian
- (ix) *B.C. v Canada Forest Products Ltd.* [2004] 2 S.C.R. 74 at 108-115 per Binnie J
- (x) John C. Maguire Fashioning an Equitable Vision for Public Resource Development in Canada The Public Trust Doctrine Revisited and Reconceptualized, 7 *Journal of Environmental Law and Practice*, 1998 page 1.
- (xi) *Illinois Central Railway v. Illinois*, 146 U.S.387 (1892);
- (xii) Liberating the Public Trust Doctrine in Natural Resource law: Effective Judicial Intervention, Joseph Sax, 1970 *Michigan Law Review* Vol. 68 Issue 3, page 472.
- (xiii) Baudouin, Moore, *La Responsabilité civile* 9th ed 2020; 1-373 to 1-439.2 (Environmental Prejudice and punitive or replacement damages)

**Exhibit R-1:** Phase 1 Env. site Ass\_biffé Spectrum Project Aug 2 2006;

**Exhibit 2:**

- Exhibit R-2A:** Entrance to Lot 1 250 042 taken February 14, 2022;
- Exhibit R-2B:** Well Head image taken February 14, 2022;
- Exhibit R-2C:** Discarded Well Testing Tubing taken February 14, 2022;
- Exhibit R-2D:** Track picture taken February 14, 2022;
- Exhibit R-2E:** New Dump image taken February 14, 2022;
- Exhibit R-2F:** Pile Height image taken February 14, 2022;
- Exhibit R-2G:** Pile Height image taken February 14, 2022;
- Exhibit R-2H:** Pile Height image and sign taken February 14, 2022;
- Exhibit R-2I:** Overlay of R-26F and R-10 Pile Height Comparison taken February 14, 2022;

**Exhibit R-9:** Documents, lot 1 250 042\_biffé which contains:

- Pages 1 through 7 is a Rapport D'Inspection of the Orphan Property conducted by Jessie Wrangel and dated 2016-09-28.
- Pages 8 through 11 are an amendment to that report also filed by Jessie Wrangel dated 2017-01-10.
- Page 12 is an Index des Immeubles
- Pages 13 and 14 are an Avis de Non-Conformite dated February 23, 2017.
- Pages 15 and 16 are an Avis de Non-Conformite dated March 1, 2017.
- Pages 17 to 20 are a Rapport de Surveillance Aerienne from the Centre de Controle Environnemental du Quebec from Jessie Wrangel date 2016-10-07.
- Pages 21 to 23 are an email from Yves Payrat dated September 26, 2017 concerning a proposed development on the Orphan Property.

- Pages 24 to 27 are a report from ABS dated March 28, 2018 for Mr. Yves Peyrat.
- Pages 28 to 37 are an Avis Technique dated Jul 24, 2018.
  - \*\*\*Section 2 on page 28 first two referenced emails were not provided. Representatives request a copy of those emails\*\*\*
- Pages 38 to 40 are emails from Yves Peyrat dated August 21, 2018 and 19 July 2018.
- Pages 41 and 42 are a note au dossier/Conversation Telephonique dated 2018-10-18 concerning the abandoning of the project slated for the Orphan Property due to environmental concerns.
- Pages 43 and 44 are an Avid de Non-Conformite dated October 31, 2018.
- Pages 45 to 60 are a Rapport d'Inspection of the Orphan Property from Jessie Wrangel dated 2018-09-11.
- Pages 61 and 62 are an Avis de Non-Conformite dated October 31, 2018 to Les Placements 4C inc.
- Pages 63 and 64 are a Sanction Administrative Pecuniaire for Les Placements 4C inc. dated March 1, 2019.
- Pages 65 and 66 are an Avis de Reclamation dated March 1, 2019 to Les Placements 4C inc.
- Page 67 is a Note au Dossier/Conversation Telephonique dated April 17, 2019 from Jessie Wrangel communicating with Les Placements 4C inc.
- Pages 68 and 69 is a letter from Jessie Wrangel to 9380-9663 Quebec Inc, the owner of the Orphan Property, dated April 25, 2019 informing them of the contamination.
- Pages 70 to 138 copies of previously submitted documents herein.
  - Pages 70 to 76 are a report from Jessie Wrangel dated 2016-09-28, a **copy** of the report seen in pages 1 through 7.
  - Pages 77 to 80 are a **copy** of pages 8 through 11, an amendment of a report from Jessie Wrangel.
  - Page 81 is a **copy** of the Index des immeubles from page 12.
  - Pages 82 and 83 is an Avid de Non-Conformite dated February 23, 2017 a **copy** from pages 13 and 14.
  - Pages 84 and 85 are an Avis de Non-Conformite dated March 1, 2017 a **copy** from pages page 15 and 16.
  - Pages 86 to 89 are a Rapport de Surveillance Aerienne from Jessie Wrangel dated 2016-10-07 **copy** from pages 17 to 20.

#### **Exhibit R-4:**

**Exhibit R-4A:** Asphalt Area Calculation Taken on Google Earth November 16, 2021

**Exhibit R-4B:** Uncalculated Asphalt Image from Google Earth Taken on November 16, 2021

**Exhibit R-4C:** Lot 1 250 042 picture of contamination 1 December 11, 2020

**Exhibit R-4D:** Lot 1 250 042 picture of contamination 2 December 13, 2020

**Exhibit R-4E** Lot 1 250 042 picture of contamination 3 December 11, 2020

**Exhibit R-4F** Lot 1 250 042 picture of contamination 4 December 11, 2020

**Exhibit R-5:**

**Exhibit R-5A:** Rapport Déchatillonnage\_biffé Sanexen document Dec 19 2017

**Exhibit R-5B:** Rapport Final\_biffé ABS report Feb 2016;

**Exhibit R-6:** Parc des Cageux, a Fragile Ecosystem Renown for its Bio-Diversity;

**Exhibit R-7:** L'île Bourdon Nature Park;

**Exhibit R-8:** Ruisseau de Feu Conservation Wetland;

**Exhibit R-9:** Mitan Archipelago's Five Protected Islands

**Exhibit R-10:** Plumitifs of files 500-61-207092-066 and 500-61-207093-064

**Exhibit R-10A:** 500-61-207092-066 Sommaire du Plumitif (G50)

**Exhibit R-10B:** 500-61-207092-066 Plumitif Détaille (G51)

**Exhibit R-10C:** 500-61-207092-066 Plumitif des Chefs d'Accusation (G54)

**Exhibit R-10D:** 500-61-207093-064 Sommaire du Plumitif (G50)

**Exhibit R-10E:** 500-61-207093-064 Plumitif Détaille (G51)

**Exhibit R-10F:** 500-61-207093-064 Plumitif des Chefs d'Accusation (G54)

**Exhibit 11:** Lot 1 250 042 Deed of Sale July 9, 2015;

**Exhibit R-12:**

**Exhibit R-12A:** Répertoire des Terrains Contaminés

**Exhibit R-12B:** Répertoire des Terrains Contaminés Excel Spreadsheet

**Exhibit R-13:** Quebec Inc Deed of Sale Lot 1 250 042 March 1, 2019

**Exhibit R-14:** Enzo Di Gneo Wins Lottery – May 25 2017;

**Exhibit R-15:** Lot 1 250 042 picture 27/06/2017

**Exhibit R-16:** Lot 1 250 042 picture 28/03/2018

**Exhibit R-17:** Procès-verbal de la séance ordinaire du comité exécutif

**Exhibit R-18:** Municipal Evaluation Lot 1 250 042

**Exhibit R-18A:** Compte de Taxes Municipales 2018

**Exhibit R-18B:** Compte de Taxes Municipales 2019



**Exhibit R-18C:** Compte de Taxes Municipales 2020

**Exhibit R-18D:** Compte de Taxes Municipales 2021

**Exhibit R-19:** Deer;

**Exhibit R-19A:** Hoof Prints;

**Exhibit R-19B:** Hoof Prints;

**Exhibit R-19C:** Hoof Prints;

**Exhibit R-19D:** Picture of Running Deer on Lot 1 250 042;

**Exhibit R-19E:** Deer Video on Lot 1 250 042 December 17, 2020;

**Exhibit R-20:** Children's Health BE SAFE "Asphalt Plant Pollution"

**Exhibit R-21:** EPA Final Rule to reduce toxic air emissions from Asphalt Processing (Feb 28,2003)

**Exhibit R-22:** Standardized Experimental Model for Cement Dust Exposure; Tissue Heavy Metal Bioaccumulation and Pulmonary Pathological Changes in Rats;

**Exhibit R-23:** Toxicological Profile for Silica ATSDR 2019;

**Exhibit R-24:** Route of the Weiner dogs;

**Exhibit R-25:** Envirosuite Data Collection Stations Co-Located with Montreal Station 55 to Collect Data for PM 2,5, 4, 4CHristalline Silica, PM 10 and SO2;