

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

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No: 500-06-001175-229

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

And

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

And

**Carl Jobin**, residing at 7000 Laurier est., St-Hyacinthe J2R 2C6

Applicants

-vs-

**Sanimax LOM Inc.**

9900 boul. Maurice Duplessis, Rivière-des-Prairies,  
Montreal, Quebec H1C 1G1

and its affiliates Sanimax ABP INC., Sanimax HLT Inc.,  
Sanimax RCI Inc., Industries Sanimax Inc., Sanimax  
Industries Inc., and Sanimax Marketing Limitée;

And

**Sanimax EEI Inc.**

2001, av. De la Rotonde

Levis, Quebec G6X 2L9

and its affiliates Sanimax ACI Inc., SANIMAX SAN INC.,

And

the **City of Montreal** (“the City”), a duly constituted legal  
person having its headquarters at 275 rue Notre-Dame Est,  
Montreal, Quebec, H2Y 1C6

And

Cosmo Maciocia, former mayor of Rivière-des Prairies, having an office formerly at 12090, rue Notre-Dame Est, Montréal, Québec, H1B 2Z1

And

Ville de Saint-Hyacinthe, having an office at 700 Ave. de l'Hôtel-de-Ville, Saint-Hyacinthe, Quebec, J2S 5B2

And

THE ATTORNEY GENERAL OF QUEBEC, for the Province of Québec, having an office at 8e étage, 1 rue Notre-Dame est., Montréal, Québec H2Y 1B6

Defendants

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

(Articles 509 ff and 571 ff., *C.C.P.*)  
(Articles 913, 976, 1457 and 1465 *C.C.Q.*)  
(Arts. 19-21 *Environment Quality Act* (ch. Q-2))  
(Sections 11, 22 and 23 *Regulation respecting Biomedical Waste* (ch. Q-2 R-12)  
(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)  
(Arts. 1, 6, 7, 46.1 and 49 *Charter of Human Rights and Freedoms* (C-12)  
(The Public/Environmental Trust (*Institutes of Justinian*, Book 2, Title 1, article 1))

**APPLICANTS RESPECTFULLY SUBMIT:**

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

All persons, be they physical or moral (with less than 50 employees in the 12 months prior to 3 January 2019) including owners, tenants or subtenants of immovable property, and all dogs residing in Riviere-des-Prairies between 3 January 2019 and the date of authorization who are part of one of the following two subclasses:

Subclass A: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 9900 boul. Maurice Duplessis, Rivière-des-Prairies.

Subclass B: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 6320 boul. Laurier est., Ste-Hyacinthe.

**THE PARTIES:**

2. At all relevant times, Applicant Elayne Lemieux has resided and intends to remain at her residence which is located within Plaintiffs' proposed class area depicted in **Exhibit R-2(a)**. Applicant Lemieux is a Québec resident.
3. At all relevant times, the Wiener dogs have resided [...] at their residence which is located within Plaintiffs' proposed class area depicted in **Exhibit R-2(a)**. They are Québec residents.
4. At all relevant times, Applicant Carl Jobin has resided and intends to remain at his residence which is located within Plaintiffs' proposed class area depicted in **Exhibit R-2(b)**. Applicant Jobin is a Québec resident.
5. Defendant Sanimax LOM Inc. [...] is a Québec incorporated company whose activities are directed, coordinated, and controlled from its headquarters in Riviere-des-Prairies, Montréal. The Defendant's principal place of business is in Riviere-des-Prairies, Montréal. It owns and operates three (3) meat rendering facilities in Quebec. The two located one each at 9900 boul. Maurice Duplessis, Riviere-des-Prairies, and at 6320 boul. Laurier est., Ste-Hyacinthe [...] are the subject of the present Application;
6. Defendant Sanimax EEI Inc. owns numerous trucks on the property of Sanimax LOM Inc's Montreal facility and is the principal transporter for and stores the primary materials necessary for the activities of Sanimax LOM Inc. Defendant Sanimax LOM Inc., through its agents and predecessors, constructed, operates and/or maintains the meat rendering facilities located in Riviere-des-Prairies and St.-Hyacinthe, [...] Québec, at the locations identified herein.<sup>1</sup>
  - A. Sanimax LOM and Sanimax EEI and their affiliates will be collectively referred to as "Sanimax."
7. Defendants City of Montreal and City of Saint-Hyacinthe ("the municipalities") along with former Mayor Cosmo Maciocia and the Province of Quebec controlled zoning, regulation, and enforcement in the area around each Sanimax facility and are responsible for the urban planning of each area. They also have regulatory authority at all relevant times. They also owe a duty to protect the public trust.

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<sup>1</sup> Second sentence moved from para. 7

## JURISDICTION AND VENUE:

8. The Superior Court of Montréal, Class Action division, has jurisdiction over this Collective Action because there are more than one hundred [...] thousand (100,000) class members located within a three and one third kilometer radius of Defendants' facilities and operations as appears from **Exhibits R-2A, R-2B, R-2C**. The value of the claim exceeds one hundred (\$100,000,000) million dollars exclusive of interest and costs. Montréal Superior Court has jurisdiction because the vast majority of the acts and omissions giving rise to Applicants' claims took place in this district, the vast majority of class members reside in Montreal, and as Defendant Sanimax LOM inc.'s principal place of business and Sanimax EEI inc.'s elected domicile, are at 9900 Boul. Maurice Duplessis, in Riviere-des-Prairies, Montreal.

## GENERAL ALLEGATIONS

### *Facts*

9. [...] Sanimax LOM inc. conducts animal rendering and waste oil processing operations where it collects oily coproducts, purifies them, and turns them into animal feed, pet food, soap and industrial chemicals;
- A. Sanimax EEI transports animal products to the Sanimax facilities where they are then processed;
  - B. The “animal products” include animal carcasses, hides and skins, animal by-products, and used oils;
  - C. The carcasses and other products are transported on trucks which drive through the neighbourhoods surrounding Sanimax to reach the facility;
  - D. It is not a seamless process, for the facilities do not always process the carcasses and other by-products quickly and sometimes even allow the trucks to sit on streets in the neighbourhood for long periods before they enter the plant;
    - (i) Many of the trucks are not properly sealed or even firmly covered;
    - (ii) Decomposing biological waste including fluids, oil, blood and carcasses regularly fall from the trucks onto the neighbourhood streets and sidewalks;
    - (iii) Birds feast on the exposed viscera and other biological waste in the open vehicles and drop chunks on adjacent properties and public areas;
    - (iv) While the trucks sit out in the open, there are no mechanisms whatsoever to control the odours emanating from them;
    - (v) This is, of course, equally true for the chunks of biological waste that fall or are carried-off and dropped by birds;
10. [...] As part of its routine processing system, Sanimax also emits polluting gases into the air and dumps wastewater as confirmed in the Superior Court decisions attached as Exhibits R-18A and R-18B;
- (i) The decision relating to air pollution, Exhibit 18A, file number 500-36-009090-187, found:
    - 1 Sanimax releases pollutants into the air from several of its chimneys;

- 2        Sanimax was guilty of an infraction of article 8.08 of the *Règlement De La*  
*Communauté Urbain de Montréal* (CMM 2001-10) as it had not installed all  
the controls required to stop its factory from emitting pollution: this  
continues to be the case despite Sanimax having been informed of its  
obligation to do so in clear terms in the constat d’infraction;<sup>2</sup>  
3        The regulatory scheme empowering these rules was valid;  
4        Sanimax’s efforts were insufficient to support a defence of due diligence.<sup>3</sup>  
(ii)     The decision relating to water pollution, Exhibit 18B, file number  
500-36-00909-188 found:  
1        Sanimax dumped contaminated wastewater into the sewage system on the  
16<sup>th</sup> of Novembre 2015;  
2        Sanimax was guilty of four (4) penal offences under the *Règlement de la*  
*Communauté Métropolitaine de Montréal no. 2008-47;*  
3        Sanimax permitted oils and fats to be dumped into the sewage system in  
concentrations higher than 100mg/L;  
4        Sanimax admitted that it has difficulty controlling sulfur in its wastewater;<sup>4</sup>  
5        Sanimax has no plan of action to prevent pollution such as this.

### **Facts Alleged Justify Conclusions Sought**

#### **Structure:**

- Article 976 CCQ
  - Odours
  - Water
  - Noise
  - Abuse of Right (Left for The Merits)
- Article 1457 CCQ
  - Breach of statutes
- Article 913
- Environmental Quality Act
- Article 1465 CCQ
- Public Trust
- Damages

#### **Article 976 CCQ**

11. Applicants’ properties have been and continue to be affected by annoyances [...] which are unreasonable and intolerable in a residential setting. They constitute a nuisance for which the Defendants are 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>5</sup>

<sup>2</sup> See para 8, constat d’infraction numéro 310-411-581.

<sup>3</sup> See paras 137 ff of Exhibit R-18A.

<sup>4</sup> See paras 64 ff of Exhibit R-18B.

<sup>5</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>6</sup>
- C. In *Ciment du Saint-Laurent*, dust, odours, and noise pollution each independently constituted abnormal neighbourhood annoyance beyond the limits of tolerance. This present case bears significant similarities regarding odour and noise;<sup>7</sup>
- D. Sanimax’s pollution 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.
- E. Despite being aware of the issue, the municipalities of Montreal and Ste-Hyacinthe, former mayor Cosmo Maciocia, and the Province of Quebec have permitted Sanimax to continue polluting. They have made only token efforts to address the myriad complaints from residents about Sanimax’s pollution. Failing to enforce environmental regulations combined with zoning a residential area so nearby should be seen as manufacturing an intolerable neighbourhood annoyance.
- F. The aforementioned municipalities, the mayor, and the Province of Quebec have thus created a neighbourhood annoyance beyond the limits of tolerance and should be held responsible for doing so.

### Odours

12. These intolerable noxious odours which enter Applicants’ properties originate from the Sanimax facilities and operations located at 9900 boul. Maurice Duplessis, Riviere des Prairies and 6320 boul. Laurier est., Ste-Hyacinthe and from Sanimax’s transport trucks; [...]

- A. These odours have been a nuisance for the entire period covered by this action;
- B. These odours have well-passed the limits of tolerance:
  - (i) When the smell occurs, children playing outside are forced to go inside. A vibrant street quickly became a quiet street;
  - (ii) They prevent residents from enjoying their properties, and, in particular, from using their outdoor spaces particularly during the summer;
  - (iii) During still periods, the smell can hang in the air for days;
  - (iv) Residents are forced to shut their windows even on hot summer days to stop the smell from entering;
  - (v) In the summer of 2020, having been confined for at least three (3) months due to Covid-19, Riviere-des-Prairies residents were particularly [...] affected by odour as, finally able to spend time out of their homes, they [...] were further "imprisoned" by putrid smells emanating from Sanimax LOM's rendering plant, as appears from the June 26, 2020, La Presse article "Enfermés à cause

<sup>6</sup> Ibid at para 95. See also Baudouin, Jean-Louis et Renaud, Yvon, *Code civil du Québec annoté*, 25e éd., Montréal, Wilson & Lafleur, 2022, at 976/21 for confirmation that fault is not required.

<sup>7</sup> Another case, *Plantons A et P inc. c. Delage*, 2015 QCCA 7 [*Plantons*] also deserves attention as it both confirms that it is the effect of the neighbourhood annoyance and not the comportment of the author of the annoyance which determines whether the annoyance is beyond the limits of tolerance, and it confirms that: “conformité avec les législations et les règlements applicables ne constitue pas pour autant une excuse légitime mettant son auteur à l’abri de sa responsabilité” at paras 78 and 79.

des odeurs nauséabondes d'une usine", **Exhibit R-14**. Many residents had to cancel St. Jean Baptiste celebrations and some children refused to swim in their pools, despite the heat. In these circumstances, the stress and psychological damage due to the odour were more acute;

- (vi) Those wishing to exercise outside and animals going for walks are more affected as they must brave the putrid odours;

13. Sanimax's facilities and operations have a long and well-documented history of failing to control odorous emissions, including but not limited to the following:

- A. There have been continuous unreasonable and excessive odour emissions and pollution emanating from Sanimax's meat rendering facilities and operations as appears in photos and videos shown in videos **Exhibit R-3, R-4;**
- B. The City of Montreal has repeatedly ticketed Sanimax, as seen in the Superior Court decision in *Sanimax LOM Inc c. Communauté Métropolitaine Montréal du 23 Dec. 2021*<sup>8</sup> which dismissed Sanimax's appeal against a finding of culpability for releasing air-borne pollutants;
- C. Sanimax itself admitted to releasing Hydrogen sulfide into the atmosphere.<sup>9</sup> This gas carries not only a repugnant stench but is also poisonous;<sup>10</sup>
- D. Residents have been so disturbed as to band together to attempt to fight the pollution of their neighbourhood. A huge number of residents have become involved in trying to stop the pollution;
- E. In the summer of 2012, [...] some neighbours in Riviere-des-Prairies started up a Facebook page called "Rivière des Prairie Clean Air Community". The page was then renamed, "RDP Neighbourhood Watch" has 8,300 members. Another page was later created called "Sanimax SOS RDP" as it was an "SOS" situation for them;
- F. They began to talk and gather citizens to share experiences. The Sanimax page "Sanimax SOS RDP" continued to grow and became the voice of the citizens' frustrations and concerns. The page [...] also has had "trolls/Sanimax employees" on it who continuously blamed them for moving "right beside Sanimax";
- G. On August 16, 2016, Mr. Theo Vecera wrote to MP Pablo Rodriguez on behalf of "Sanimax SOS" and the RDP Citizens Movement Council as appears from **Exhibit R-16B;**
- H. On November 1, 2019, the Sanimax SOS committee met with Mayoress Valerie Plante to apprise her of the concern of citizens as a result of Sanimax's pollution as appears from **Exhibits R-16A;**
- I. The odour emissions have become far more significant in the last three (3) years as appears from the list of complaints in Riviere des Prairies attached as **Exhibit R-6** and **Exhibits R-7A, R-7B, R-7C, R-7D, R-7E** as further confirmed by the La Press newspaper article attached herewith as **Exhibit R-9G** and by CBC article attached herewith as **Exhibit R-9F; [...]**

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<sup>8</sup> File number: 500-36-009090-187

<sup>9</sup> See *ibid*, at para 142.

<sup>10</sup> See the government of Canada information sheet on Hydrogen sulfide at: <https://www.canada.ca/en/health-canada/services/chemical-substances/fact-sheets/chemicals-glance/hydrogen-sulfide.html>

### Noise

- J. Sanimax's operations also create abnormal and unreasonable noise pollution which exceeds the limits of tolerance:
- a. They create significant traffic: in Riviere-des-prairies it is most serious along Boulevard Maurice Duplessis;
  - b. Truck traffic occurs even during the night when it disrupts the sleep of nearby residents;
  - c. Sometimes trucks idle along Boulevard Maurice Duplessis for hours at a time;
  - d. This disturbance is more aggravating and intolerable when it occurs on holidays such as La Fete Nationale.<sup>11</sup>

### Water

- K. Sanimax's operations also create abnormal and unreasonable water pollution which exceeds the limits of tolerance:
- a. Sanimax's operations produce an enormous quantity of wastewater;<sup>12</sup>
  - b. This water is contaminated, often with high concentrations of oils and fats or with sulfur. Sanimax has been fined for infractions relating to dumping contaminated water into the sewage system as seen in the superior court decision *Sanimax LOM inc. c. Communauté Métropolitaine de Montréal* of Dec. 23, 2021;<sup>13</sup>
  - c. That decision found not only that had Sanimax dumped contaminated water, but that it had also characterized wastewater without proper supervision;
  - d. This contaminated wastewater causes increased strain on the sewage and water treatment systems as it is harder to treat and may build-up and harm the infrastructure;
  - e. Pollutants also leak from Sanimax trucks directly into the water supply and sewage system;
  - f. Decomposing blood, biological fluids, oil, and biological waste leak and fall from trucks, as shown in **Exhibits R-17A, E, F and G.**
  - g. The above justifies an award of damages for neighbourhood annoyance and an injunction to curtail this nuisance as polluting the water and sewage systems (the water in the sewage system must then be treated) constitutes an intolerable neighbourhood annoyance. Spilling waste liquids on to neighbourhood roads is also an intolerable neighbourhood annoyance.

### Abuse of Right

- L. Sanimax may argue that their activities are authorized. While this is not the case, and even if it were the unreasonable manner in which they operate would be an abuse of right, that is a question for the merits;
- M. Sanimax is in flagrant breach of (i) their Certificate of Authorization to operate rendering facilities and trucking permits, (ii) the *Environment Quality Act*, (c. Q-2) articles 19.1 to 21;

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<sup>11</sup> Barrette c. Ciment du Saint-Laurent Inc., 2003 CanLII 36856 (QC CS), [2003] JQ no 5273.

<sup>12</sup> See a screenshot of Sanimax's website where a hint of the amount of wastewater Sanimax creates is given: included as Exhibit R-21.

<sup>13</sup> File number 500-36-00909-188.



(iii) the *Regulation Respecting Biomedical Waste*, (iv) Nuisance Bylaws of the City of Montreal [...] and the Town of Ste-Hyacinthe [...] produced as **Exhibits 12A-D**; (v) 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; (vi) the Public Trust doctrine as concerns air, water and land to be conserved for future generations; they cannot claim their activities were authorized;<sup>14</sup>

### **Article 1457 CCO**

- N. Defendants, well aware of the risks of such odour, noise, and water contamination, intentionally, willfully, or negligently failed to protect residents from the deleterious cumulative effects of those emissions;
- O. In Rivière-des-Prairies, trucks carrying meat waste sit in long lines on Maurice Duplessis Blvd. outside the Defendant Sanimax LOM's facility, fetid meat waste decomposing, off gassing and leaching into the environment from uncovered and/or unsealed transport vehicles. Fluids leak from trucks onto streets and into sewers. This has occurred [...] several times per month in the last 3 years. This creates an additional unreasonable and intolerable traffic problem for residents as Maurice Duplessis Boulevard is reduced to one lane. Maurice Duplessis Blvd. entrance is exclusively used by Sanimax despite there being a second entrance to the facility on 7th street, which is not used by Sanimax as there is no weigh station at that entrance.
- P. Sanimax has been repeatedly fined and taken to court in penal proceedings by the City of Montréal as appears from **Exhibit R-10 and Exhibits R-18A and R-18B**. Given its extensive history of pollution by meat-production waste from meat rendering and emissions of resulting noxious odours, it is clear that Sanimax's pollution described herein is intentional and in bad faith;
- Q. Sanimax has been the subject of similar class action proceedings on 3 occasions, one in Green Bay, Wisconsin, another in St. Paul, Minnesota, and the 3<sup>rd</sup> in Montréal Québec (which was settled in 2018), as appears from **Exhibits R-9A, C, D and E**;
- R. Sanimax frequently contravenes the *Regulation Respecting Biomedical Waste*.<sup>15</sup> Sanimax's meat production waste is "animal and anatomical waste consisting of carcasses, body parts and organs" and therefore biomedical waste as defined by the *Regulation respecting biomedical waste* ch. Q-2 R-12.<sup>16</sup> They are in regular and repeated breach of:
- (i) Section 11 of the *Regulation*, as they allow biomedical waste to be discharged into a sewer system;

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<sup>14</sup> See again *Plantons*, supra note 5. See also *The Institutes of Justinian* which set out that: "by the law of nature these things are common to mankind— the air, running water, the sea . . ."6

<sup>15</sup> *Regulation Respecting Biomedical Waste*, CQLR c Q-2, r 12.

<sup>16</sup> See art. 1 of the *Regulation Respecting Biomedical Waste*, q-2, r.12.

- (ii) Section 22, as the animal waste is not shipped in “sealed leak proof containers”, Applicants note here that sealed should not require air-tight in this context but should be tightly sealed so as to prevent any spilling and so as to prevent any animals from reaching the animal products, and are not “kept refrigerated at less than 4°C” as none of the transport vehicles observed by Applicants are refrigerated; and
  - (iii) Section 23 as identification of biomedical waste labels are not affixed by the shipper to the outside of each biomedical waste container, as none of the transport trucks observed by Applicants are so identified;
- S. This intentionally faulty and grossly negligent transportation of meat production waste is a biosecurity concern as vehicles transfer disease-causing agents. Without biosecurity protocols in place, there is disease transmission. Sanimax’s vehicles, trailers or containers are required to be sealed, by article 6.06 of Montreal Bylaw 90, have a barrier to prevent leakage of liquids and construction that facilitates effective cleaning and sanitation and a cover over the waste. Having received municipal environmental infractions from the City of Montreal for in excess of \$858,000 dollars (Exhibits R-8 and R-10) and been the subject of numerous complaints [...], about one half of Montreal’s environmental complaints. Saimax’s reprehensible and dangerous conduct *must* be deemed and presumed to be “unlawful and intentional”;
- T. Sanimax has failed to install and maintain “state of the art” technology to properly control its emissions of noxious odors. Such failures include but are not limited to the facility’s ozone generation system, odor abatement equipment, and raw material intake and/or storage. Transport vehicles are required to be sealed, by article 6.06 of Montreal bylaw 90, and have a barrier to prevent leakage of liquids, construction that facilitates effective cleaning and sanitation, and a cover. Transportation of meat production waste raises biosecurity concerns and must be sealed, refrigerated, and identified. Vehicles may unwittingly transfer disease-causing agents. Without proper biosecurity protocols in place there is disease transmission;<sup>17</sup>
- U. Scavengers including birds, wild animals and vermin feed on diseased waste and transmit pathogens to pets and humans. Contaminated waste infects the food chain through the rendering process. Defendants’ emissions and their failure to curtail them, pollute the air, soil, and water including “surface water and groundwater in their natural state;”
- V. Birds feast on the exposed viscera and other biological waste in the open vehicles and cause contamination on adjacent properties and residential areas;<sup>18</sup>
- W. Sanimax’s breaches of the Regulation Respecting Biomedical Waste indicate that their actions depart from the standards of conduct incumbent upon them contrary to article 1457 CCO;
- X. Sanimax’s convictions for air and water pollution, as upheld in the Superior court decisions attached as Exhibits R-18A and R-18B, also indicate a departure from the standards of conduct incumbent upon them as they contravened the Règlement de la Communauté Métropolitaine de Montréal 2008-47;

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<sup>17</sup> Moved from 15.

<sup>18</sup> Section moved up from below.

- Y. The damages described below are directly and immediately caused by Sanimax’s faults, for the harm is directly caused by the pollution Sanimax emits;
- Z. The City of Montreal, Ville de Ste-Hyacinthe, and Cosmo Maciocia are responsible for permitting residential zoning too close to the Sanimax facilities. Zoning exists in large part to prevent industrial pollution such as this from affecting residences, so zoning in a way which would inevitably lead to neighbourly disturbances resulted in the diminished quality of life of the Applicants;
- AA. Instead of restricting zoning so as to curtail neighbourhood annoyance, the town of Ste-Hyacinthe modified Sanimax’s certificate to permit them to build an additional building by passing RÈGLEMENT NUMÉRO 350-128.<sup>19</sup>

### Article 913 CCO

- BB. Sanimax has “appropriated air and water” in contravention of Art. 913 C.C.Q., in breach of the public’s right to clean air and water, “surface water and ground water in their natural state”, pursuant to 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, and the Public Trust;
- CC. Sanimax’s pollution prevents neighbours from making use of air and water as residents normally would which constitutes an illegal appropriation,<sup>20</sup>

### Environment al Quality Act s. 20

- DD. Sanimax [...] has released water contaminated with Ammoniacal Nitrogen, in quantities up to 15 times the legal norms of 45mg/l which causes chronic toxicity and other affects on aquatic life, and also complicates the treatment of drinking water as appears from **Exhibit R-8;**<sup>21</sup>
- EE. Total Kjeldahl Nitrogen (TKN, a parameter used to measure organic nitrogen and ammonia) is exceeded in Defendant Sanimax LOM inc.’s wastewater, which has contributed to methemoglobinemia in infants (blue baby syndrome) as appears from **Exhibit R-8;**
- FF. Sanimax also releases H2S (Hydrogen sulfide) into the air. This is a poisonous gas and causes environmental harm.<sup>22</sup>

<sup>19</sup> See Exhibit R-23, documents relating to the municipal council meetings approving the expansion.

<sup>20</sup> See Baudouin, Jean-Louis et Renaud, Yvon, *Code civil du Québec annoté*, 25e éd., Montréal, Wilson & Lafleur, 2022, at 913/4 « Le voisin qui pollue, par le bruit, la poussière ou la dégradation de l’environnement de quelque manière que ce soit, s’expose au risque que les personnes affectées le tiennent responsable des dommages qui en résultent. »

<sup>21</sup> See also the Superior Court decision attached as Exhibit R-18B, file number 500-36-00909-188.

<sup>22</sup> See footnotes 9 and 10.

GG. The Defendants are liable pursuant to section 20 of the Quebec *Environment Quality Act* [Q-2], for emission of the aforementioned “contaminants” as defined by the *LQE* into air and water;

### **Art 1465 CCO- Autonomous Act of a Thing**

HH. The meat rendering facilities and [...] their transport vehicles are controlled by Sanimax, the guardians of the meat processing waste. Sanimax is also the guardian of the animal products in the trucks. The meat [...] waste autonomously decomposes, emitting foetid odours into the atmosphere and biomedical liquids, pathogens, and decomposing substances onto roads, into sewers, and waters including “surface water and groundwater in their natural state”;

II. Sanimax is liable under the regime of 1465 C.C.Q. for the prejudice caused by the autonomous acts of meat waste under their control. Sanimax exercises real power and control over the waste and is the guardian of it. The waste is an autonomous thing, as not directed by a person, and, while decomposing, emits gases, liquids and solids which cause prejudice to the members as well as to the environment. The meat waste is active, in the sense of autonomous things, since it moved to the Applicants' and members properties and to the environment;

JJ. As guardian of the meat waste, Sanimax is obliged to prevent it from causing harm to others, including by autonomous acts, by covering, sealing, containing, and refrigerating the meat waste and incorporating “state of the art” safeguards to stop it from being emitted to the surrounding area. Sanimax failed to take all reasonable steps to do so and is consequently liable;

KK. Control of the transport and storage of the animal products also rests with the municipalities and mayor and indirectly the Province as they have the power to control the transport and storage of these products through regulations and enforcement. They are consequently also liable for the harm caused by the autonomous acts of the animal products.

### **Public Trust**

LL. The municipalities, the mayor, and the Province of Quebec have a duty to protect the public trust.

MM. This is a duty to preserve the water, air, and land for future generations.<sup>23</sup> This duty requires positive action from the municipalities, mayor and Province to curtail the wanton damage to the public trust inflicted by Sanimax. Since the Province and Municipalities have failed to perform this duty, they should be held responsible for breaching a positive obligation.

### **Damages**

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<sup>23</sup> See Exhibit R-0 for the sources and interpretation of the public trust.

- NN. Defendants fail to stop biomedical waste from meat processing, escaping transport vehicles, including those operated by Defendant Sanimax EEI inc. Decomposing blood, biological fluids, oil and biological waste leak and fall from trucks, as shown in **Exhibits R-17A, E, F and G**. Sanimax's transport vehicles have birds, mostly seagulls, feasting on them, as shown in Exhibits R-5 (video November 3, 2020) Exhibits R-17B, C and D (photos), indicating these trucks are not properly covered, sealed and refrigerated, and nowhere indicate they carry biological waste;
- OO. Visual pollution, including carcasses and parts, upsets residents and causes nausea and stress;
- PP. [...] Sanimax's pollution 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;
- QQ. Sanimax's noxious odours cause extreme physical and psychological symptoms well below toxic levels. The psychological effect of the exposures creates high levels of stress in cases of repeated exposure. Such stress leads to physical manifestations including hypertension through repeated blood pressure elevations, depressive reaction, nausea, vomiting, breathing difficulties, sleep loss and loss of appetite;
- RR. Defendants' repeated faults (Art. 1457 C.C.Q.), cause continuing bodily injury, psychological, moral and material injury including health damages and stress for which reparation is due;
- SS. The Defendants' failure to protect the public trust has allowed the air, water, and land which ought to be preserved for future generations to be repeatedly and unnecessarily polluted with, among other pollution, high levels of water contaminants and poisonous gas;
- TT. The Applicants and members' rights pursuant to Articles 1, 6, 7 and 46.1 of the *Charter of Human Rights and Freedoms* (C-12) have been breached by, along with the noise and water pollution, the waste from animal rendering, noxious odors and fetid liquids and solids caused thereby described herein. Pursuant to Article 49 of the *Charter of Human Rights and Freedoms* (C-12) Applicants and members may obtain the cessation of such interference, and compensation for the moral and material prejudice resulting therefrom. As this is unlawful and intentional interference, punitive damages should be awarded;
- UU. 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, as the damage alleged herein is impossible to reverse and becomes worse over time. The specific injunctive relief sought includes but is not limited to:
- a. [...] installing and maintaining "state of the art" technology to rectify its deficiencies and properly control its emissions of noxious odors: such deficiencies include, but are not limited to, the facility's ozone generation system, odor abatement equipment, air filters, and raw material intake and/or storage systems;

- b. [...] building an airtight garage with filters to control odor during offloading of trucks;
  - c. [...] sealing transport containers, as required by article 6.06 of Montreal bylaw 90, having a barrier to prevent leakage of liquids, constructing facilities for cleaning and sanitation of the trucks, covering the waste to minimize the emission of noxious odours, refrigerating the transported materials to 4°C, and properly identifying the trucks;
- VV. 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;

**The facts giving rise to the personal claim of The Representatives<sup>24</sup> [...]**

14. The facts giving rise to the personal claims of the representatives are as follows:

A. Elayne Lemieux:

- (i) Elayne Lemieux has been living in Riviere-des-Prairies since 2013;
- (ii) She sometimes notices the smell emanating from Sanimax. For example, on August 3<sup>rd</sup>, 2022, while she was running on Boulevard Henri-Bourassa, she noticed a smell that can only be described as that of feces;
- (iii) She has noticed that transport trucks are omnipresent in the neighbourhood; many of these are Sanimax trucks;
- (iv) These trucks proceed in high volumes on the streets in her neighbourhood including Boulevard Maurice-Duplessis and Boulevard Rivière-des-Prairies;
- (v) The noise and traffic these trucks create disturbs Elayne Lemieux and disrupts the neighbourhood;
- (vi) In the past, the Sanimax trucks would line-up along Boulevard Maurice-Duplessis creating additional noise and odour.

B. The Wiener dogs, Bart, Marquez, Raymond and Asa:

- (i) The Wiener dogs live in the affected area;
- (ii) The Wiener dogs daily running/walking route is through the area polluted by Sanimax including along Boulevard Maurice-Duplessis;<sup>25</sup>
- (iii) The Wiener dogs should not be forced to take inferior walking/running routes because Sanimax is polluting part of the neighbourhood;
- (iv) The rotting materials which leak or are dropped from Sanimax trucks create the risk that the Wiener dogs will be poisoned by consuming foetid material;
- (v) The Wiener dogs have extremely sensitive respiratory systems which may be harmed by the Hydrogen Sulfide released by Sanimax.

<sup>24</sup> Bolded and modified with the new representatives.

<sup>25</sup> See the running/walking route maps attached as Exhibit R-20.

- C. Carl Jobin:
- (i) Carl Jobin purchased land in Ste-Hyacinthe in 2002 and built his home there in 2009. From 2002 to 2009, he noticed some odours while he improved the land, but he was rarely there;
  - (ii) When he began living at his new home, he was often disturbed by the smells emanating from Sanimax, especially in the summer;
  - (iii) In 2019, the annoyance worsened, for there was work on highway 116. This caused traffic to be blocked including Sanimax trucks. This created additional intolerable and unreasonable smell;
  - (iv) The annoyance is most aggravating and intolerable on weekends and holidays, such as St-Jean Baptiste. It has several times on such holidays been impossible to do anything outside on days which were otherwise perfect for enjoying his outdoor space;
  - (v) The odour has caused Carl Jobin significant annoyance:
    - a His friends refuse to visit for a barbeque because, as they told him, they cannot stand the smell;
    - b He used to run a shuffleboard game, but now no one comes because of the smell;
    - c He built two large decks and palapa-style gazebo for receiving guests which he likewise cannot enjoy because no one will visit because of the smell;
    - d He has a scooter and several electric four-wheelers which he is now planning to sell at a loss because no one comes to enjoy them, again because of the smell;
  - (vi) Had Carl Jobin known about the annoyances caused by Sanimax he would never have purchased his land or invested into building his home and creating the little paradise which Sanimax has ruined.

15. [...]

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

16. The identical, similar, or related questions of law or fact between each member of the class and the Defendants which Applicant wish to have decided by the class action are:

Article 976 CCQ

- A. Whether the pollution constitutes a neighbourhood annoyance beyond the limits of tolerance within the meaning of Article 976 C.C.Q. [...] and whether the Defendants created this neighbourhood annoyance;
- B. Whether, even if Defendant is able to prove it complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas*, *Plantons*, and *Ciment St-Laurent*;

- C. Whether the Defendants action constitute an abuse of right thereby removing any authorization given through their certificate of authorization;
- D. Whether the degree of harm suffered by Plaintiffs and the class is unreasonable and excessive in a residential environment; [...]

Article 1457 CCQ

- E. Whether Sanimax's pollution constitutes a fault;
- F. Whether Sanimax was at fault in not taking sufficient measures to assure that the resulting pollution did not create nuisance, exceed safe levels, or constitute an abuse of right, and whether their actions in this regard were intentional and/or fraudulent;
- G. Whether [...] Sanimax [...] intentionally, recklessly, willfully, wantonly, maliciously, grossly, and negligently failed to construct, maintain and operate its facilities;
- H. Whether Sanimax committed a fault or was negligent in leaving trucks in the open without any air-filtration before unloading or in not upgrading its air filtration systems;
- I. Whether Defendants owed any duties to Plaintiffs or to the public through the Public Trust;
- J. Which duties Defendants owed to Plaintiffs;
- K. Whether the City of Montreal, Ville de Ste-Hyacinthe or former mayor Cosmo Maciocia were at fault or negligent when they permitted residential zoning and development in close proximity to Sanimax facilities;
- L. Whether the faults or omissions of the Defendants caused damages to the Applicants;

Article 913

- J. Whether Sanimax appropriated air or water contrary to article 913 CCQ;

Environmental Quality Act

- K. Whether the pollution described herein contravenes Art. 20 *in fine* E.Q.A. and whether it is biomedical waste;
- L. Whether the pollutants resulting from Defendants' operations constitute "contaminants," "pollutants" and/or "hazardous material" within the meaning of Art. 1 of the *E.Q.A.*;



Article 1465 CCO

- M. Whether Defendants are liable for the autonomous acts of things under their control, and whether releasing odours is an autonomous act of the meat-waste products rendered by Sanimax;

Public Trust

- N. Whether Defendants breached their duties regarding the Public trust;

Damages

- O. Whether the inconvenience, discomfort, stress, economic and health problems that were suffered by each of the members of the class were caused by/or created as a result of Defendants pollution;
- P. Whether the pollution caused increased health problems, including stress;
- Q. Whether Defendant's pollution was intentional and whether punitive, exemplary damages should be awarded pursuant to Art. 49 of the *Charter*;
- R. Whether Defendant:
- i) committed willful errors, acts, and omissions with regard to environmental protection;
  - ii) As a result of *Charter* breaches, including pursuant to Arts. 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 C-12* for unlawful and intentional breaches of fundamental Charter rights;
- S. Whether Applicant and each member of the class *has a right* to claim damages, *including* moral, exemplary and *Charter* damages, from the Defendants;
- T. Which steps Sanimax has and has not taken [...] to control its emissions through the construction, maintenance and operation of its facility;
- U. Whether and to what extent the Defendants' emissions were dispersed over the class area;
- V. The proper measure of damages incurred by Plaintiffs and the Class.
- W. Whether the Applicants and Class members are entitled to injunctive relief, and if so, what relief;

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

17. 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, perhaps around 100,000, 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;
  - 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;
  - E. Moreover, due to the significant experts' costs associated with the litigation of this matter, 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;
  - F. There is no other manner in which the dogs can be properly represented.

### CONCLUSIONS SOUGHT

18. The conclusions sought by the Applicant are:

**ORDER Sanimax** to take, within 3 months, all measures necessary to ensure that further pollution of this nature does not occur;

**CONDEMN** the Defendants to pay each member average \$500 per month of noxious odour;

**CONDEMN** the Defendants to pay each member \$600 for moral damages including stress and inconvenience;

**CONDEMN** the Defendants to pay each member \$700 for punitive damages pursuant to article 49 of the *Charter*;

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

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

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

**ORDER** injunctive relief to have the two (2) facilities retrofitted (i) to install and maintain “state of the art” technology to properly control its emissions of noxious odors. Such failures include, but are not limited to the facility's ozone generation system, odor abatement equipment, and raw material intake and/or storage systems; (ii) to build an airtight garage and install special filters on delivery vehicles to minimize the emission of noxious odours,<sup>26</sup> (iii) all vehicles be [...] leakproof or sealed and refrigerated to 4°C and properly labelled as carrying biomedical waste;

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

**THE CLASS MEMBERS APPOINTED AS REPRESENTATIVE PLAINTIFF’S ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS (ART 575 (4))**

19. The Applicants request that they be ascribed the status of Representatives.
20. The Applicant Elayne Lemieux is in a position to faithfully and properly represent the members, for the following reasons:
  - A. She lives in a neighbourhood directly affected by the meat waste contamination and resulting pollution described herein and has been a victim of the pollution for over three years;
  - B. She 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;
  - C. She 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. She has acquainted herself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;

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<sup>26</sup> This must comply with the new *Communauté Métropolitaine de Montréal Regulations* attached as exhibit R-19.

- E. She has no conflict of interest with the class members.
  - F. In particular, she has no conflict with the former class representatives.<sup>27</sup>
  - G. She is the guardian/walker of the dogs;
21. 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:
- A. They reside in the neighbourhood near a Sanimax facility.
  - B. [...] The route they walk each day is included as Exhibit R-20. They consequently experience the full effect of the pollution because of their proximity to it.
  - C. The Wiener dogs are particularly sensitive to environmental issues. They are a sentinel species, a sentient domesticated animal, well placed to represent Flora, Fauna and biodiversity in RDP, its environs and watershed;
22. The Applicant Carl Jobin is in a position to faithfully and properly represent the members of the class, for the following reasons:
- A. He lives in a neighbourhood directly affected by the meat waste contamination and resulting odour described herein and has been a victim of the pollution for over three years;
  - 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 the neighbourhood identified under the description of class presented above;
  - C. He has organized and informed class members as concerns the pollution alleged herein;
  - D. 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;
  - E. He has acquainted herself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
  - F. He has no conflict of interest with the class members;
  - G. In particular, he has no conflict with the former class representatives.<sup>28</sup>
  - H. He has made significant efforts to locate a representative plaintiff for the neighbourhood near the Sanimax plant in Levis to no avail;

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<sup>27</sup> See the email from Theo Vecera attached as Exhibit R-22.

<sup>28</sup> See the email from Theo Vecera attached as Exhibit R-22.

**APPROPRIATE DISTRICT**

23. The Applicants' request that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
- A. The Defendant's Sanimax LOM Inc's head office is located in the district of Rivieres-des-Prairies, Montreal, Quebec as is the elected domicile of Sanimax EEI Inc.;
  - B. The pollution complained of that caused the harm suffered by Applicants and the other class members was carried out in the Province of Québec and the cast majority of the class members reside in Montreal;
  - C. Most of the Applicants as well as the majority of members of the class which they represent, reside in Montreal in the Province of Québec;
  - D. There exists no better suited forum or district to render justice in the present dispute;

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

**GRANT** the present Motion;

**AUTHORIZE** the institution of a class action as follows:

**ATTRIBUTE** to Applicants the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class of natural persons, namely:

All persons, be they physical or moral (with less than 50 employees in the 12 months prior to 3 January 2019) including owners, tenants or subtenants of immovable property, and all dogs residing in Riviere des Prairies between 3 January 2019 and the date of authorization who are part of one of the following two subclasses:

Subclass A: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 9900 boul. Maurice Duplessis, Rivière-des-Prairies.

Subclass B: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 6320 boul. Laurier est., Ste-Hyacinthe.

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

- A. Whether the class should be defined as:

All persons, be they physical or moral (with less than 50 employees in the 12 months prior to 3 January 2019) including owners, tenants or subtenants of immovable property, and all

dogs residing in Riviere des Prairies between 3 January 2019 and the date of authorization who are part of one of the following two subclasses:

Subclass A: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 9900 boul. Maurice Duplessis, Rivière-des-Prairies.

Subclass B: Residents within 3.33 kilometers of Defendant Sanimax LOM inc.'s meat rendering facility located at 6320 boul. Laurier est., Ste-Hyacinthe.

Article 976 CCQ

- E. Whether the pollution constitutes a neighbourhood annoyance beyond the limits of tolerance within the meaning of Article 976 C.C.Q. [...] and whether the Defendants created this neighbourhood annoyance;
- F. Whether, even if Defendant is able to prove it complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas, Plantons, and Ciment St-Laurent*;
- G. Whether the Defendants action constitute an abuse of right thereby removing any authorization given through their certificate of authorization;
- H. Whether the degree of harm suffered by Plaintiffs and the class is unreasonable and excessive in a residential environment; [...]

Article 1457 CCQ

- E. Whether Sanimax's pollution constitutes a fault;
- M. Whether Sanimax was at fault in not taking sufficient measures to assure that the resulting pollution did not create nuisance, exceed safe levels, or constitute an abuse of right, and whether their actions in this regard were intentional and/or fraudulent;
- N. Whether [...] Sanimax [...] intentionally, recklessly, willfully, wantonly, maliciously, grossly, and negligently failed to construct, maintain and operate its facilities;
- O. Whether Sanimax committed a fault or was negligent in leaving trucks in the open without any air-filtration before unloading or in not upgrading its air filtration systems;
- P. Whether Defendants owed any duties to Plaintiffs or to the public through the Public Trust;
- Q. Which duties Defendants owed to Plaintiffs;

R. Whether the City of Montreal, Ville de Ste-Hyacinthe or former mayor Cosmo Maciocia were at fault or negligent when they permitted residential zoning and development in close proximity to Sanimax facilities;

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

*Article 913*

J. Whether Sanimax appropriated air or water contrary to article 913 CCQ;

*Environmental Quality Act*

K. Whether the pollution described herein contravenes Art. 20 in fine E.Q.A. and whether it is biomedical waste;

X. Whether the pollutants resulting from Defendants' operations constitute "contaminants," "pollutants" and/or "hazardous material" within the meaning of Art. 1 of the E.Q.A.;

*Article 1465 CCQ*

Y. Whether Defendants are liable for the autonomous acts of things under their control, and whether releasing odours is an autonomous act of the meat-waste products rendered by Sanimax;

*Public Trust*

Z. Whether Defendants breached their duties regarding the Public trust;

*Damages*

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

BB. Whether the pollution caused increased health problems, including stress;

CC. Whether Defendant's pollution was intentional and whether punitive, exemplary damages should be awarded pursuant to Art. 49 of the Charter;

DD. Whether Defendant:

iii) committed willful errors, acts, and omissions with regard to environmental protection;

iv) As a result of Charter breaches, including pursuant to Arts. 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 C-12 for unlawful and intentional breaches of fundamental Charter rights;

EE. Whether Applicant and each member of the class has a right to claim damages, including moral, exemplary and Charter damages, from the Defendants;

- FF. Which steps Sanimax has and has not taken [...] to control its emissions through the construction, maintenance and operation of its facility;
- GG. Whether and to what extent the Defendants' emissions were dispersed over the class area;
- HH. The proper measure of damages incurred by Plaintiffs and the Class.
- II. Whether the Applicants and Class members are entitled to injunctive relief, and if so, what relief;

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

**ORDER** Sanimax to take, within 3 months, all measures necessary to ensure that further pollution of this nature does not occur;

**CONDEMN** the Defendants to pay each member average \$500 per month of noxious odour;

**CONDEMN** the Defendants to pay each member \$600 for moral damages including stress and inconvenience;

**CONDEMN** the Defendants to pay each member \$700 for punitive damages pursuant to article 49 of the *Charter*;

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

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

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

**ORDER** injunctive relief to have the two (2) facilities retrofitted (i) to install and maintain "state of the art" technology to properly control its emissions of noxious odors. Such failures include, but are not limited to the facility's ozone generation system, odor abatement equipment, and raw material intake and/or storage systems; (ii) to build an airtight garage and install special filters on delivery vehicles to minimize the emission of noxious odours,<sup>29</sup> (iii) all vehicles be [...] leakproof or sealed and refrigerated to 4°C and properly labelled as carrying biomedical waste;

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

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<sup>29</sup> This must comply with the new *Communauté Metropolitaine de Montreal Regulations* attached as exhibit R-19.



**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 8<sup>th</sup> day of August, 2022

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Charles O'Brien

Lorax Litigation for Lemieux, the Wiener dogs, and Jobin

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 8<sup>th</sup> day of August, 2022.

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Charles O'Brien  
Lorax Litigation for Petitioners

In support of the Amended 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:** Collective Action sign up sheets;

**Exhibit R-2:** Odour exposure simulation Maps;

**Exhibit R-2A:** Sanimax Lévis people affected within radius of 3.22km  
**Exhibit R-2B:** Sanimax Montreal people affected within radius of 3.22km  
**Exhibit R-2C:** Sanimax Saint Hyacinthe people affected within radius of 3.22km  
**Exhibit R-3:** Video Global News Aug 8, 2019  
**Exhibit R-4:** Video CTV news Oct 24, 2018  
**Exhibit R-5:** Video Sanimax visit November 3 2020  
**Exhibit R-6:** Sanimax - Plaintes 1994-2021 - 16 sept 2021  
**Exhibit R-7A:** Facebook site against Sanimax  
**Exhibit R-7B:** Complaints 1  
**Exhibit R-7C:** Complaints 2  
**Exhibit R-7D:** Complaints 3  
**Exhibit R-7E:** Complaints 4  
**Exhibit R-8:** Injunction city for water pollution by Sanimax  
**Exhibit R-9A:** article Sanimax settlement Fox 11  
**Exhibit R-9B:** article Sanimax de Lévis Actualité  
**Exhibit R-9C:** article Saint Paul Star Tribune  
**Exhibit R-9D:** article Saint Paul settlement  
**Exhibit R-9E:** article Animal rendering plant will pay Star Tribune  
**Exhibit R-9F:** article CBC Coderre  
**Exhibit R-9G:** article Lapresse  
**Exhibit R-10:** copies constats Sanimax  
**Exhibit R-11A:** Compte rendu comité de vigilance environnementale de Sanimax Lom - 5 mai 2008  
**Exhibit R-11B:** Compte rendu comité de vigilance environnementale de Sanimax Lom - 13 février 2012  
**Exhibit R-11C:** Compte rendu comité de vigilance environnementale de Sanimax Lom - 28 mai 2012  
**Exhibit R-12:** Injonction Oct. 25 2017  
**Exhibit R-13:** Plumitif Sanimax Lomex  
**Exhibit R-14:** ClassAction\_2013 Lomex  
**Exhibit R-15:** Sanimax government report  
**Exhibit R-16A:** Sanimax SOS Committee Ms. Plante  
**Exhibit R-16B:** Sanimax SOS document for Mr. Pablo Rodriguez  
**Exhibit R-17A:** Intestines on grass picture November 3, 2020  
**Exhibit R-17B:** Molinaro pic 1 June 14, 2021  
**Exhibit R-17C:** Molinaro pic 2 June 14, 2021  
**Exhibit R-17D:** Molinaro pic 3 June 14, 2021  
**Exhibit R-18A:** Superior court decision relating to air pollution, file number 500-36-009090-187, Sanimax Lom inc. c. Communauté métropolitaine de Montréal, 2021 QCCS 5446, leave to appeal granted.  
**Exhibit R-18B:** Superior court decision relating to water pollution, file number 500-36-00909-188  
**Exhibit R-19:** New Communauté Métropolitaine de Montréal regulations regarding animal rendering, Sanimax Lom inc. c. Communauté métropolitaine de Montréal, 2021 QCCS 5447  
**Exhibit R-20 :** Routes of the Weiner dogs.  
**Exhibit R-21:** Sanimax wastewater quantity as seen on Sanimax Website.  
**Exhibit R-22:** Email of Theo Vecera encouraging others to take his place in the action.  
**Exhibit R-23:** documents relating to the municipal council meetings approving the expansion.