

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(“Class Action”)
SUPERIOR COURT

No:

Mirelle Dufresne
1616 Nicolet
Montréal Qc
H1W 3K5
And
Etienne Bouchard-Lamontagne
3681 a 3687, rue Adam, Montréal (Qc)
H1W 1Z3
And
Veronique St. Onge
1451 rue Parthenais, Montreal (Qc)
H2K 0A2
And
Julie Desrosiers
1643 De Chambly, Montreal (Qc)
H1W 3H9
And
Odile Nachbauer
1651 rue de Chambly, Montreal (Qc)
H1W 3H9
And
Chantal Lanthier
3657 rue Adam, Montreal (Qc)
H1W 1Z3

Applicants

-vs-

The Mayor of Mercier-Hochelaga-Maisonneuve,
Pierre Lessard-Blais,

borough office 6854 Rue Sherbrooke Est
Montréal, QC H1N 1E1

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

The Mayor of Ville-Marie and Montreal (“the City”)

Valerie Plante

800, boulevard De Maisonneuve Est

19e étage

Montréal (Québec) H2L 4L8

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVES and
INJUNCTION TO CORRECT AND MAINTAIN INFRASTRUCTURE**

(Articles 509 ff and 571 ff., C.C.P.)

APPLICANTS RESPECTFULLY SUBMITS:

1. Applicants Etienne Bouchard-Lamontagne, Mirelle Dufresne, Veronique St. Onge, Julie Desrosiers, Odile Nachbauer and Chantal Lanthier seek to institute a class action on behalf of the natural persons forming part of this class, of which the Applicants are members:

All persons, physical or moral (with less than 50 employees in the 12 months), owner, tenant or subtenant of moveable property in Montreal the quadrangle bounded by the streets encircled by a perimeter running from the corner of Saint Catherines and Ave de Lorimier north to the intersection of Ave de Lorimier and Rue de la Rouen, East to the intersection of Rue de la Rouen and Rue Chapleau, North to Rue Chapleau and Rue Hochelaga, East to the corner of Hochelaga and Avenue Letourneux, South to the corner of Ave Letourneux and Sainte Catherine, and West to the corner of Sainte Catherine and Ave de Lorimier (shown in blue on exhibit). In a separate area encircled by a perimeter running from the corner of Dickson and Rosemont, East on Rosemont to Rue Du Quesne, South on Rue Du Quesne to Rue de Jumonville, West to rue Dickson and North to Blvd Rosemont (shown in yellow on exhibit). See **Exhibit R-1 The Affected Area**;

2. The class described in paragraph 1 is composed of the following sub-classes:
 - A. Persons who have rented property in The Affected Area, Quebec since 2005;
 - B. Persons who have owned property in The Affected Area, Quebec since 2005;
 - C. Involuntary insurers - 160 condo owners in the same building as Veronique St. Onge and others in the Affected Area since 2005.
3. On 23 September 2022, a letter notifying the City of Montreal of the flooding issue was sent to the City of Montreal from Etienne Bouchard-Lamontagne - letter of notice. The letter and attached photos are produced herewith as **Exhibit R-4D**, the letter, and **Exhibit R-6A** through **R-6H**, the pictures. It details the essentials of the issue and informed the City of the Applicants' intention to institute a class action should the situation not be resolved, or compensation not be paid.
4. The area, Hochelaga, historically is known to be named after a native word meaning "beaver path" and is where a number of streams, ruisseau, came together, see **Exhibit R-15D**.
5. An article was written about the issue of the flooding, see **Exhibit R-10A**, written on December 5, 2022 reports of flooding occurring on rue Pierre-Bedard, Bossuet, Louis-

Veillot and De Cadillac on September 13, 2022.

6. During the March 7, 2023 Ville Marie Borough Council Meeting (**Exhibit R-2A**) a number of Ville Marie borough flood victims, now involuntary insurers, asked questions with regard to the September 13, 2022 and prior flooding events as well as raising the issue as to whether, given climate change, this flooding could be fairly considered exceptional.
 - a. At 18:39 Daniel Vaudrin pointed out that the 250 residents of Square Cartier had now suffered six separate flooding events, the cost of repair being into the millions.
 - b. He noted that they had now lost their insurance and that Mr. Hervé Loge of the City had confirmed that the pipe was installed in about 1900, was outdated, needed to be replaced, and that such replacement would halve the flood risk.
 - c. He pointed out that obviously a case study had been done and asked when the pipe would be changed.
 - d. The Defendant Mayoress Plante was not able to be present at that meeting.
 - e. Sophie Mazorolle replied that inspectors had been looking into a solution, confirmed that the pipes need to be replaced, again blamed global warming, called the September 13 22 event exceptional, and contradicted Mr. Hervé Loge, saying that irrelevant of the size of the pipe, no system could have dealt with the water flow of September 13, 2022.
 - f. Mr. Vaudrin's follow-up claimed that this was in no manner an exceptional rainfall and pointed out that this was their sixth flooding event and that this occurs about every two years.
 - g. At minute 34, Melissa Salia pointed out that all of the flood victims' claims had been denied coverage by the city despite the fact that they have recognized their infrastructure to be outdated and inadequate.
 - h. She asked how they dared to deny coverage. Ms. Mazerrolle declined to answer as in her view there were legal proceedings, which at that time was not the case.
 - i. When asked why after six flooding events no solution had been found, Ms. Mazerrolle claimed the owners have duties as well, though she specified none, and that climate change was the cause of this flooding.
 - j. At minute 45:39, Alexandre Deliere of Wurtele Street provided side-by-side photographs, page 5-1 from Quebec's "Guide de Gestion des Eaux Pluviales" (**Exhibit R-16**), with a photo greatly resembling one taken on September 13, 2022, the former photo being entitled "Exemple de réseau majeure avec une mauvaise évacuation".
 - k. Ms. Mazerrolle declined to comment.
 - l. Mr. Deleire then pointed out that given climate change it was no longer appropriate to call such events exceptional and asked when the city would come to the same conclusion.
 - m. Ms. Mazerrolle essentially agreed, noted that the Defendants had to adapt, was aware they were in a new environment, but they did not have the funds available to do what was necessary.
 - n. She further blamed insurance for failing to do its part to help compensate victims of flooding damage. It is for exactly that reason that these proceedings candidly raise the issue of who will be an involuntary insurer and who should be. To

paraphrase Kenneth R Feinberg, these proceedings are intended to raise questions: Who gets What and who is to pay for it¹.

FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY THE APPLICANTS

7. The facts on which the Applicants' personal claims against the Defendants are based:
 - A. There have been repeated flooding problems in the Affected Area on the island of Montreal. These repeated events have taken place for several decades, most recently September 13, 2022 and according to an Access to Information Request there has been yearly flooding since 2013, see Exhibit **Exhibit R-3 Courriel de Arcelle Appolon**, a response to our access to information request.
 - B. Etienne Bouchard-Lamontagne has met with residents in the area to discuss the continuing flooding problems, went door to door to contact members and has provided them with the details of these proceedings.
 - C. Etienne Bouchard-Lamontagne has encountered many living in the Hochelaga borough who express feelings of anger and sorrow that the Mayor and Borough of Mercier-Hochelaga-Maisonneuve has not taken any significant action to protect them from the flood problems caused by insufficient storm drains and catchments in the area and ill maintained systems. That many of these members experience extreme anxiety every time there is a heavy rain in fear that it will lead to a flooding event.
 - D. All of the class members are neighbors within the meaning of Art. 976 C.C.Q. and have suffered unreasonable and intolerable annoyance.
 - E. The Defendants have control over flooding and were negligent in not stopping or curtailing the flooding alleged herein;
 - a. Class members suffer from the cumulative effects of flooding produced and emitted by all Defendants including the willful blindness, gross negligence, failure to protect citizens' fundamental rights and failure to provide and maintain proper drainage system infrastructure, Defendants having contravened Articles 19.1 and 20 of the *Environment Quality Act* c Q-2;
 - b. The storm drain system from about 1900 is antiquated and they have admitted it, see **Exhibit R-11** video at 30:49 and they have stated that the problem would be significantly solved (halved) by replacing the pipes.
 - c. The stream Aquaduc map obtained through an access to information request,

¹ Kenneth R. Feinman, *Who Gets What: Fair Compensation after Tragedy and Financial Upheaval*, BBS Public Affairs 2012

Exhibit R-15B, clearly shows narrowing of the system at the corner of rue Chambly and rue Adam resulting in a geiser coming from the overburdened system, see **Exhibit R-6E**, shown below. The system narrows from 1200mm to 200mm at that location. The map shows many other locations with similar issues.



- F. The Defendants, including the municipal government, by their gross negligence and bad faith, have intentionally contravened Articles 1, 6, 46.1, 48 and 49 of the *Quebec Charter of Human Rights and Freedoms* CQLR c. C-12;
- G. In addition to blaming climate change, the victims, the Québec government for lack of financing, and making the outlandish claim that such flooding events are exceptional even though they occur every two years, Defendants also take the position that excess urban development, or over-paving, which has over time dangerously reduced green space, is a cause of urban flooding. That claim is certainly true, Defendants are liable for that having occurred, as defendants have historically preferred development, thus enlarging their tax base, but have not invested in the requisite commensurate upgrades to water infrastructure. In *Forest c. Laval*, Mme. Justice Otis refers to this at page 6 and following as aggravation of the servitude and the flow of water. On page 8 she cites Guy Lord, *Le Droit Québécois des Eaux*, noting that municipal governments have duties and obligations including that of foreseeing the servitude concerning the flow of water.

Where the flow of water is altered they are obligated to install an efficient drainage system that avoids flooding. At page 9 she cites abundant case law including, notably, *Montréal v. Browns and Supplies* [1961] B.R. 651, wherein the city was found liable for failing its urban planning, to foresee and ensure against the inevitable flooding would not result. setting as well. Citing *Bourcier c. St-Lambert* (1994) 60 Q.A.C. 87 she notes that municipalities are barred by a *fin de non-recevoir* from invoking their own past turpitude as a defense to the damages resulting from such negligence. As defendants *aggravated the servitude*, they should pay for the damages so caused.

H. As per Lazarus, Three-year prescription does not apply

As concerns prescription, *fraus omnia corrumpit* (fraud unravels all)², including prescription. The fraud in the present matter is that Defendants, prior to September 13, 2022, blamed the flooding on either global warming or on the victims themselves. Those victims were systematically denied coverage by Defendants without reason and ordered to install unnecessary backflow preventers, or perform other work such as installing sump pumps, none of which would have obviated the flooding damage done and was used as a pretense for the Defendants to not accept responsibility. Their municipal infrastructure was installed in approximately 1900, and is severely outdated, inadequate, and ill-maintained which is the proximate cause of these flooding events. The representatives and class members are therefore entitled to claim for all prior flooding events as they were only properly informed of the dilapidated infrastructure in place in late 2022. Defendants were aware, or most certainly ought to have been aware, that their infrastructure was insufficient, extremely outdated, and ill maintained.

- I. In particular, Defendants have acted intentionally, willfully, negligently in their failure to recognize and protect citizens from the cumulative effects of flooding;
- J. The Defendants, well aware of the risks of flooding, have intentionally, willfully, negligently and in concert with the other Defendants, failed to protect citizens from the deleterious cumulative effects of flooding, causing them material, moral damages and stress.
- K. The Defendants' liability for things in their custody under arts. 1457 and 1465 CCQ extends to drainage systems, and the Defendants are consequently strictly liable for the injury caused by the flooding which resulted from the insufficiency of the drainage system as indicated in **Exhibit R-16 guide-gestion-eaux-pluviales**;
- L. The Defendants have and continue to commit faults within the meaning of Art. 1457 C.C.Q., causing continuing bodily, moral and material injury, health, damages including stress for which reparation is due;
- M. 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, for the damage alleged herein is, for the most part, impossible to reverse and becomes worse over time. They ask this Honorable Court to order corrective work performed within 6 months of the filing of this Application.

² Lord Denning in *Lazarus Estates v Beasley* All E.R. [1956] Vol. 1 341

- N. 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;
 - O. The class members have received no prior compensation from the municipality for flood damage, so their right of action is not negated by S585 (8) of the Cities and Towns Act;
8. The facts giving rise to the personal claim of Etienne Bouchard-Lamontagne are, in addition to those in sub- paragraphs 6.A to 6.N, as follows:
- A. Etienne Bouchard-Lamontagne owns property in the affected area which was flooded in 2022.
 - B. He has experienced material losses due to flooding events;
 - C. He has experienced monetary losses due to flooding events;
 - D. The flooding caused prejudice to Etienne Bouchard-Lamontagne's property.
 - E. He was underinsured and had to contribute to the cost or repair for repeated flood damage.
 - F. He has had extreme stress due to repeated flooding events and is fearful every time it rains.
 - G. He has documented the details of his flooding events and will provide same in due course.
 - H. He filed a Notice pursuant to the Cities and Towns Act within the 15 day delay , see **Exhibit R-4D**, provided for by article 585, and was denied coverage by the City's Adjuster Ceurrier et Ass.
 - I. While he has not installed backflow preventers, he says it would not have made a difference as concerns this flooding, nor, given the jurisprudence of the Supreme Court of Canada, is he obliged to do so.
 - J. He says that as concerns the flooding which occurred on September 13, 2022, the residential properties located at 3681-3683-3685-2687 rue Adam suffered material flooding damage and that he suffered significant moral damages.
 - K. He, like the other representatives, specifically seeks immediate injunctive relief to order the Defendants to perform all necessary infrastructure upgrades and to maintain the system *within a period of six months* from the filing of these proceedings, pursuant to the decision rendered by Madam Justice Otis in *Forest c. Laval*.
 - L. Since acquiring his property in May 2015 he has had annual water infiltration into his basement with the exception of the year 2017. He avoided making insurance claims during those years so as not to imperil his insurance coverage or raise premiums unnecessarily and as the damage was limited.
 - M. As appears from his photographs, demand letter and claim, the damage he suffered on September 13, 2022 was of an entirely different order, leading him to make an insurance claim. His basement was filled with over a meter of water, and his backyard completely flooded.
 - N. He says that the entirety of Adam Street was flooded and avoided driving into his back alley for fear his car would be submerged. When he entered he found many of his

personal effects floating including tools, chairs, sports equipment, clothes and children's toys.

O. Despite having made a timely insurance claim September 13, 2022, his insurer denied coverage on the basis that he had not taken measures to allow for proper drainage of his basement. Representative Bouchard Lamontagne is therefore also, unfortunately, and despite having paid for insurance, an involuntary insurer. This denial of coverage created immense stress for him, as indicated in his letter to the city of November 16, 2022, attached herewith as **Exhibit R-4A**.

P. Adding insult to injury, Montréal's insurance adjuster, on January 4, 2023 denied coverage for 3681 Adams St., with the providing reasons, referencing Article 585 of the *Cities and Towns Act*, as appears from **Exhibit R-4B**, attached.

Q. He estimates the damage to his property as a result of this flooding event at \$25,000, as appears in his summary, see **Exhibit R-4C**. He also claims \$5,000 for the time it took him to clean and resolve these issues, including failed efforts to have his insurers pay the indemnity.

R. He also states that he suffers extreme stress for fear that future flooding events will again cause him material and emotional damage for which he claims \$3,000 in moral damages per flooding event.

9. The facts giving rise to the personal claim of Mirelle Dufresne are, in addition to those in sub- paragraphs 6.A to 6.N, as follows:

A. Mirelle Dufresne owns property in the affected area.

B. She has experienced many flooding events in her home;

C. She has experienced material losses due to flooding events;

D. She has experienced monetary losses due to flooding events;

E. She has experienced insurance problems as a result of flooding events;

F. She has experienced extreme stress due to repeated flooding events and is fearful every time it rains;

G. She has documented the details of her flooding events, as will be provided in due course;

H. As concerns September 13, 2022 flood damage, she filed a Notice online as required by article 585 of the *City and Towns Act online* within the legal delay, and was denied coverage, as appears from **Exhibit R-18**.

I. She owns the property at 1616 Nicolet and suffered material and moral damages as a result of the September 13, 2022 flooding. He has lived in that address since 1988 and owned since 2002 during which time she has suffered multiple flooding events.

J. From 1988 to 2002 there was only one major flooding event.

K. In 2005 water flowed under the door of the basement causing \$10,000 in damages which was indemnified by Desjardins insurance.

L. In 2013 during major renovations they realized that the drains were emptying by a pipe into the neighbor's property. They remove that pipe and notify the neighbor. All of her plumbing has the requisite backflow preventers.

M. In 2016 there was another flooding event where the backflow preventer exploded because of the pressure caused by heavy rain. ground level toilets overflowed at her

neighbors, 1620 Nicolet and she again had the plumber performed corrective works, a copy of which invoice will be provided in due course.

N. In 2018 there was another flooding event in the toilet on the second floor and exasperated, further renovation works were done, the plumbing invoice will be provided in due course.

O. In 2019 another flooding event on the second floor toilet and exasperated she did further work to the column to the roof the toilet the sink in the washer again producing the plumbing invoice as will be provided in due course.

P. In 2020 she noticed that water had pooled on the ground and added a "squeeze-in" and a backflow preventer for the drain to the ground, a copy of that plumbing invoice also sent to the city as will be provided in due course.

Q. On September 13, 2022 due to considerable flooding, the water entering through the garage door in the basement, she suffered an estimated \$35,000 in damages. Given the significant work she had done in the past to ensure against such damage, she had the property inspected by camera and had a written report prepared which concluded that all of her backflow preventers were properly installed and functional. She will file the inspection, report and invoice in due course.

R. Though the property is fully compliant, she continues to suffer flooding damage and notes that there have been no less than six events during her tenure at the property. She is hugely dissatisfied that the city's answer to her complaints, which blame her, is to say that she has not sufficiently installed plumbing equipment, backflow preventers or other paraphernalia. she says that these flooding events are in no manner exceptional as they occur during all heavy rain and are due to the outdated, inadequate and ill maintained infrastructure under the control of the Defendants.

S. She also claims \$3,000 in moral damages per flooding event.

10. The facts giving rise to the personal claim of Julie Desrosiers are, in addition to those in sub-paragraphs 6.A to 6.N, as follows:

A. Julie Desrosiers owns property in the affected area.

B. She has experienced many flooding events to her home;

C. She has experienced material losses due to flooding events;

D. She has experienced monetary losses due to flooding events;

E. She has experienced insurance problems as a result of flooding events;

F. She has experienced extreme stress due to repeated flooding events and is fearful every time it rains;

G. She has documented the details of her flooding events which information and supporting documentation will be provided in due course as **Exhibit R- 13**;

H. She is one of the condo owners at 1641 to 1647 de Chambly and says those four properties has suffered repeated flooding problems in the last 12 years. She therefore seeks the immediate correction of all shortcomings and maintenance issues with regard to Defendants' outdated, inadequate and ill maintained infrastructure. She also testifies to an incredible level of stress and psychological damage caused to her and others by this repetitive, unreasonable and intolerable flooding.

I. She suffered flooding damage in 2012 which caused it in excess of \$10,000

damages, paying a \$3,000 deductible on their insurance, and resulting in higher premiums or as a result. while the works were being performed the co-owners or had to live elsewhere for a number of weeks. Following that flooding event all plumbing upgrades and backflow preventer installations required by the Defendants were performed.

J. Despite that work they suffered another flooding event in 2015 but made no insurance claim as they were concerned their premiums would be raised or they would lose their insurance coverage. Following this event the relationships between the various co-owners markedly deteriorated. Furthermore, any time there was a strong rain the co-owners on the lower floor lived through incredible stress having to take various measures to avoid or minimize damage. Those stressors include concern about humidity or mould in the foundations.

K. Again on 2020 there was water infiltration on the ground floor apartments which further heightened tensions between co-owners. Again, they decided not to make a claim on their insurance, such that they as well have become involuntary insurers.

L. On September 13, 2022 she was the victim of severe flooding and intense stress. There was flooding in the crawlspace, water pouring into the sink and the dishwasher. Again they cleaned the damage themselves and opted not to make insurance claim for fear of becoming uninsurable. She notes that the levels of stress were again raised and that the relations between co-owners were further deteriorated and that with each flooding event the stress and tension between co-owners is worsened.

M. She says that the resale value of her condo has been greatly diminished by these repetitive flooding events and that in every case the Defendants blame the victims and refuses to take responsibility for its own faults, infrastructure and inaction.

N. In addition to other damages claimed both material, moral and psychological, she seeks compensation for the additional insurance premiums she has had to pay as a result of the Defendants failure to address its inadequate and ill maintained infrastructure.

O. To date, she has been the victim of four (4) flooding events, all of which are the result of the Defendant's inadequate outdated and improperly maintained infrastructure.

P. She Notified the City within the legal delay online as stipulated by the *Cities and Towns Act* and nonetheless was unjustifiably denied coverage by the City's claims adjuster.

Q. She claims \$3,000 in moral damages per flooding event.

11. The facts giving rise to the personal claim of Odile Nachbauer are, in addition to those in sub- paragraphs 6.A to 6.N, as follows:

- A. Odile Nachbauer owns property in the affected area.
- B. She has experienced many flooding events to her home;
- C. She has experienced material losses due to flooding events;
- D. She has experienced monetary losses due to flooding events;
- E. She has experienced insurance problems as a result of flooding events;
- F. She has experienced extreme stress due to repeated flooding events and is fearful every time it rains;
- G. Despite giving Defendant City timely Notice she was denied coverage by the

City's adjuster Cuerrier and Ass.

H. She speaks on behalf of the property located at 1649 – 1657 de Chambly, which was flooded on September 13, 2022 and on other occasions before that. She, too, seeks immediate injunctive relief within 6 months such that the requisite corrective measures are taken immediately and that they suffer no further flooding resulting from this dilapidated and ill maintained infrastructure.

I. The property in question has been owned by her mother since 2002 and she has lived there from 2009 to 2012, and again from 2014 to date, and is now actively involved in the administration of the building with her mother.

J. Since 2010 the building has backflow preventers and all requisite plumbing infrastructure.

K. From 2009 the toilets on the first two floors gargle any time there is even the slightest rain, indicating that there is a rapid and abnormal overloading of the sewers.

L. On September 13, 2022 their toilet on the second floor gargled intensely, and she therefore went to attend to the units where the tenants had not yet returned from work. Water poured out of all drains, the toilet, the bath and sinks. She shut down the electrical panel to avoid electrocution. He says it was a horrible situation causing her immense stress as it was impossible to contain such a large and intense volume of water.

M. She and her husband had to spend three hours trying to mop up the water using towels and clause of an claim \$25 an hour each for that work for a total of \$150.

N. The damages resulting from the September 13 2022 flooding include replacing the vanity and cupboards in the kitchen, rebuilding the floors of the bathroom and kitchen which costs have been professionally estimated at \$25,000 and which amount she claims from defendants. For her stress she claims an additional \$8,000, for a total of \$33,150.

12. The facts giving rise to the personal claim of Chantal Lanthier are, in addition to those in sub- paragraphs 6.A to 6.N, as follows:

A. Chantal Lanthier owns property in the affected area.

B. She has experienced many flooding events to her home;

C. She has experienced material losses due to flooding events;

D. She has experienced monetary losses due to flooding events;

E. She has experienced insurance problems as a result of flooding events;

F. She has experienced extreme stress due to repeated flooding events and is fearful every time it rains;

G. She has documented the details of her flooding events and will provide supporting documentation in due course;

H. She seeks compensation for compensatory and moral damages suffered as a result of repeated flooding at her property located at 3657 Adam, which she has owned since January 2003.

I. Her first flooding event was in 2005 following which she installed a backflow preventer. Despite taking this measure her basement was flooded again in 2012.

J. In June 2022 she suffered further flooding during a large rain water coming into

the shower and the basement drain. Nonetheless, those damages pale in comparison to the event of September 13, 2022.

K. September 13, 2022 water flowed from her toilet and shower in the basement and went into the floor drain. They attempted to limit the damage but once water came in through the basement door, the best they could do was try to salvage as many of their musical instruments as possible. Soon thereafter, the door gave way under the pressure and water rose to a height of 60 cm. Within a few minutes there was 1.2 m of water in the basement, and only the fire department could empty it.

L. This occurred despite the fact that they had the proper backflow preventers installed and she concludes that the cause of the damage was the city sewer system. All of their belongings in the basement were a total loss and they had to demolish and rebuild the entire basement in order to avoid mould. Their daughter had a room in the basement and since that time has had no room to live in. These repeated flooding events have caused them considerable pain and suffering and unbearable stress.

M. From these events she concludes that the sewer system is outdated, inappropriate, ill maintained and that she and her family are repeatedly victimized as a result. Immediate injunctive relief is required such that she and other citizens do not suffer future flooding.

N. She Notified the City within the legal delay stipulated by the *Cities and Towns Act* and nonetheless was unjustifiably denied coverage by the City's claims adjuster;

O. She claims \$3,000 in moral damages per flooding event for a total of \$9,000.

13. The facts giving rise to the personal claim of Veronique St. Onge are, in addition to those in sub-paragraphs 6.A to 6.N, as follows:

A. She represents the sub class of "involuntary insurers" namely residents and/or condo owners who had insurance during their first flooding event, which insurance covered their loss, and then the insurer raised the premium or capped the indemnity, and so during subsequent flooding their second flooding event either paid more for coverage or received less indemnity, following which the insurer discontinued coverage. These residents became involuntarily self-insured. In Square Cartier one hundred and 160 condominium owners (250 residents) represented by Veronique St. Onge, by way of resolution passed by the condo association, those owners participate (involuntarily) in the coverage of the losses of the 20 condo owners who suffered flooding damage during the September 13, 2022 event. In such circumstances, the proper descriptor of those hundred and sixty condo owners is that of "involuntary insurer". Nonetheless, a significant number of class members, not part of this particular condo Association, have, with the passage of time, also become involuntarily self-insured. But for discontinued or denial of coverage, their damages would have been limited to insurance premiums, even when increased. Damages for loss paid by the victims themselves are claimed against Defendants. In the case of the Square Cartier over one million dollars is claimed.

B. She addressed a question to the Defendants concerning the flooding at the December 2022 Budget Hearing, see video **Exhibit R-2B** at 28:13. The City Representative Hervé Loge at the Budget Hearing candidly admitted the pipe serving the sector is outdated, from 1900, too small and would be replaced within three (3) years, halving the flood risk.

This undermines the denials of insurance coverage the residents have received over the years indicating bad faith, which unravels all, including prescription. Note the juxtaposition with the initial position taken by Ms. Mazerolle at 20:43 who blamed victims for lack of backflow preventers and climate change, the Defendants' historic party line.

C. She claims \$3,000 in moral damages for each flooding event for a total of \$18,000.

14. The sub-class of owners in particular have faced, in addition to the facts alleged in 6.A to 6.N, damage to property, loss of insurance coverage or increased premiums, and added difficulty in finding tenants, and decreased value of their rental properties and, therefore, stress and respiratory distress and loss of income.
15. The sub-class of tenants in particular have faced, in addition to the facts alleged in 6.A to 6.N, loss of enjoyment of property, stress and respiratory distress.
16. The sub-class of involuntary insurers, as condos are no longer insured and are being forced to share the risk.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

17. The facts giving rise to personal claims by each of the members of the class against the Defendants are the same as those which justify the Applicant's individual recourse, as is made evident through the following documents:
 - A. A copy of a class members and a description of their claims to institute a Class Action against the Mayors and the City, dated starting in September, 2022 and circulated by Etienne Bouchard-Lamontagne, signed by approximately 40 City residents filed by Applicant Etienne Bouchard-Lamontagne is produced herewith as **Exhibit R-5** and a list of claims collected by Veronique St. Onge, see **Exhibit R-17B**.
 - B. A collection of pictures taken by Etienne Bouchard-Lamontagne during repeated flooding events in Mercier-Hochelaga-Maisonneuve is produced herewith as **Exhibit R-6 Etienne Bouchard-Lamontagne pictures R-6A through R-6H**.



- C. A recent inspection of the drainage system of Mercier-Hochelaga-Maisonneuve, performed on February 4, 2023 which shows the extreme age of the system, is produced herewith as **Exhibit R-7A through R-7F**. These storm sewers are in the lanes behind homes in the most affected area and show the extreme age of the storm sewer system;



- D. A recent inspection of the location of the most extreme flooding location was performed on February 12, 2023 and a comparison photo was made showing that water shown in Exhibit R-6E is clearly coming from the stream Aquaduc and not the nearby storm sewer is provided as **Exhibit R-9C**. It is also noted that the distance from this overflow which clearly pushed off the cover is only approximately 677 meters from the Saint Lawrence River which was not at flood levels at that time.



Distance from stream overflow to river is approximately 677 meters which implies blockage.

- E. A map provided by Montreal as a result of an access to information request shows that there are significant decreases in pipe size where the stream flows, from 1200mm to 200mm. This decrease in size corresponds with the location of the eruption of water shown in Exhibit R-6E. The map is provided as Exhibit R-15B.
- F. A full list of recent flooding events in the specified zone provided by the city as a result of an Access to Information Request is provided as **Exhibit R-8A** through **R-8J**. We note that the number of complainants should be multiplied by about ten to be reflective of the actual number of victims.

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

- 18. 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:
 - A. Whether the inconvenience, discomfort, stress, economic and health problems including stress that were suffered by each of the members of the class were caused by/or created

as a result of unnecessary flooding;

- B. Whether the flooding contravenes sections 1(5), 19.1, 20, 90, 91, 92 and 94 and following of *The Environmental Quality Act* (“the *E.Q.A.*”);
- C. Whether the repeated flooding and pollution described herein contravene art. 20 *in fine E.Q.A.* since they “porte atteinte au confort de l’être humain”;
- D. Whether the flooding and resulting pollution constitute neighbourhood annoyance beyond reasonable and/or intolerable levels such as to trigger the provision of Art. 976 the *Quebec Civil Code*, additionally if that flooding constitutes a fault, was it intentional and whether the governmental Defendants were complicit therein, such that punitive, exemplary and treble damages are warranted;
- E. Whether Defendants:
 - i) committed willful errors, acts and omissions with regard to flood damage protection such that their liability is *solidary* or *in solidum*;
 - ii) are, as a result of the foregoing, liable to punitive or exemplary damages are due by operation of Section 49 of the *Quebec Charter* as well as by operation of Section 24 (1) of the *Canadian Charter of Rights and Freedoms* for unlawful and intentional breaches of fundamental Charter rights;
- F. Whether the drainage system of Mercier-Hochelaga-Maisonneuve and Ville-Marie is a “thing” under the custody of the City of Montreal and Mayor of Mercier-Hochelaga-Maisonneuve and Mayor Plante under arts 1457 and 1465 CCQ, and whether the defendants are consequently strictly liable for the damage caused by autonomous acts of the drainage system;
- G. Whether, even if Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas* and *Ciment St-Laurent*;
- H. Whether the Applicant and each member of the class *has a right* to claim damages, *including* moral, exemplary and Charter damages, from the Defendants;
- I. Given the “serious, precise and concordant” facts alleged is this Honourable Court justified in coming to a presumption of fact that the flooding is a result of improper/insufficient drainage system and a failure to properly maintain it;
- J. Whether Defendants were at fault for failing to properly maintain/or upgrade the water infrastructure.

-

K. As the flooding issue was repeatedly raised at Municipal meetings, as indicated in Exhibit R-XX, the Defendant Mayors were negligent and/or at fault for his inaction;

L. Whether the class should be defined as:

All persons, physical or moral (with less than 50 employees in the 12 months), owner, tenant or subtenant of moveable property in Montreal the quadrangle bounded by the streets encircled by a perimeter running from the corner of Saint Catherines and Ave de Lorimier north to the intersection of Ave de Lorimier and Rue de la Rouen, East to the intersection of Rue de la Rouen and Rue Chapleau, North to Rue Chapleau and Rue Hochelaga, East to the corner of Hochelaga and Avenue Letourneux, South to the corner of Ave Letourneux and Sainte Catherine, and West to the corner of Sainte Catherine and Ave de Lorimier (shown in blue on exhibit). In a separate area encircled by a perimeter running from the corner of Dickson and Rosemont, East on Rosemont to Rue Du Quesne, South on Rue Du Quesne to Rue de Jumonville, West to rue Dickson and North to Blvd Rosemont.

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

19. 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, at least eight thousand [8,000], 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 each class or sub-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.

CONCLUSIONS SOUGHT

20. The conclusions sought by the Applicant are:

DECLARE that all Defendants have contravened Articles 1, 7, 46.1 and 49 of the Charter of Human Rights and Freedoms;

ORDER the Defendants to take, within 6 months, all measures necessary to ensure that further flooding of this nature does not occur;

CONDEMN the Defendants solidarily to pay to owners \$15,000 for the first instance of flooding, \$30,000 for the second instance and \$45,000 for the third instance, for damage to property; all in excess of any payouts received from insurance or government support;

CONDEMN the Defendants solidarily to pay to owners \$7,000 for the first instance of flooding, \$15,000 for the second instance and \$22, 000 for the third instance for loss of insurance or increased insurance premiums;

CONDEMN the Defendants solidarily to pay to tenants \$10,000 for each year of flooding to compensate for the loss of enjoyment of property;

CONDEMN the Defendants solidarily to pay each class member \$25,000 for moral damages including stress and inconvenience;

ORDER the collective recovery of said damages; and

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

MAKE ANY OTHER ORDER this Honorable Court deems appropriate.

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

21. The Applicant Etienne Bouchard-Lamontagne requests that he be ascribed the status of Representative.

22. The Applicant Etienne Bouchard-Lamontagne is in a position to represent the members adequately, for the following reasons:
- A. He lives in a neighbourhood directly affected by the flooding and resulting pollution described herein and has been a victim of the flooding and resulting material, moral damage and stress in Hochelaga.
 - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the flooding 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 went door to door discussing in great detail the flooding with about 300 class members;
 - D. He gathered the 40 names, addresses and phone numbers of persons who have been affected by flooding (Exhibit R-1) and also gathered information on the nature of the various harm and inconvenience suffered by those persons;
 - E. 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.
 - F. He has acquainted himself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
23. The Applicant Mirelle Dufresne requests that she be ascribed the status of Representative.
24. The Applicant Mirelle Dufresne is in a position to represent the members of the class who are tenants adequately, for the following reasons:
- A. She is a long standing resident in the borough of Mercier-Hochelaga-Maisonneuve;
 - B. She has been directly affected by the flooding;
 - C. She has acquainted herself with the concerns of the class members and has been vocal in her attempts to bring the situation to the attention of the municipality through petitions and meetings;
 - D. She has spoken to many of the affected areas residents and knows of the extent of flooding they have suffered and of their attempts to mitigate the harm;
 - E. She has witnessed the impact of the flooding on other class members, including the anxiety and stress and fear;
 - F. She has experienced difficulties with insurance because of the flooding and knows of the

difficulties other class members have faced, especially those who have lived in the area for many years;

G. She has no conflict of interest with the other representative plaintiffs;

25. The Applicant Veronique St. Onge is in a position to represent the members of the class who are involuntary insurers adequately, for the following reasons:

A. She is a long standing resident in the borough of Ville-Marie;

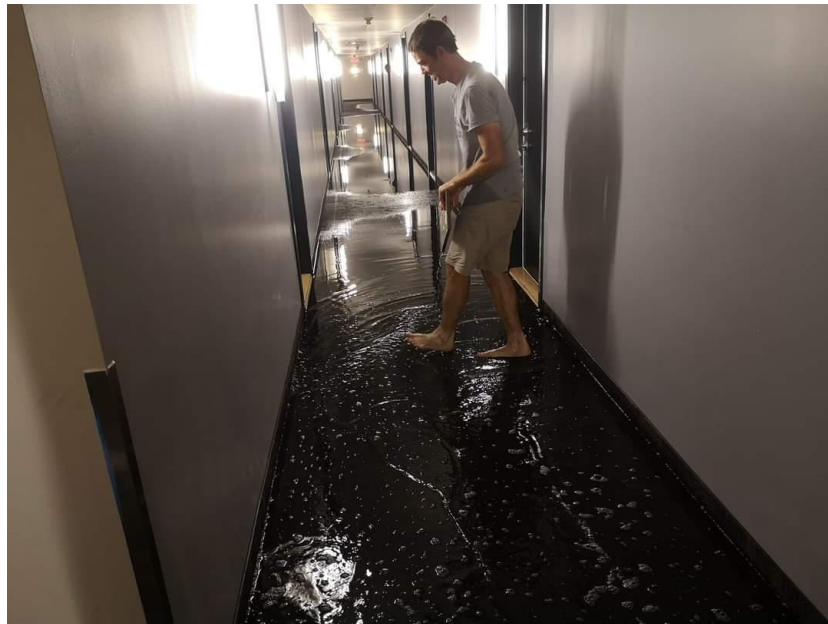
B. She has been indirectly affected by the flooding as an involuntary insurer and has collected the names and addresses of 160 involuntary insurers;

C. She is a condo owner in the affected condominium;

D. She has acquainted herself with the concerns of the class members and has been vocal in her attempts to bring the situation to the attention of the municipality through petitions and meetings;

E. She has spoken to many of the affected areas residents and knows of the extent of flooding they have suffered and of their attempts to mitigate the harm;

F. She has witnessed the impact of the flooding on other class members, including the anxiety and stress and fear and took pictures during the Sept 13 2022 flooding event, see **Exhibits R-17D through R-17J**;



G. She has experienced difficulties with insurance because of the flooding and knows of the difficulties all her class members have faced;

H. The condominium owners have suffered over a million dollars in damages from

flooding, see **Exhibit R-17B**.

- I. She has no conflict of interest with the other representative plaintiffs;
26. The Applicants requests that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
- A. The Defendants allowed flooding and resulting material, moral damages and stress in Mercier-Hochelaga-Maisonneuve and Ville-Marie Quebec;
 - B. The flooding complained of that caused the harms suffered by Applicant and the other class members was carried out in the City of Montreal;
 - C. Applicants as well as the members of the class which they represent, all reside in the City of Montreal;
 - D. There exists no better suited forum or district to render justice in the present dispute;

WHEREFORE, APPLICANTS PRAY THIS HONOURABLE COURT TO:

GRANT the present Motion;

AUTHORIZE the institution of a class action as follows:

ATTRIBUTE to Etienne Bouchard-Lamontagne and Mirelle Dufresne, Veronique St. Onge, Julie Desrosiers, Odile Nachbauer, and Chantal Lanthier the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class of natural persons set out herein;

27. **IDENTIFY** as follows the principal questions of fact and of law to be treated collectively in the class action proceedings:
- A. Whether the inconvenience, discomfort, stress, economic and health problems including stress that were suffered by each of the members of the class were caused by/or created as a result of unnecessary flooding;
 - B. Whether the flooding contravenes sections 1(5), 19.1, 20, 90, 91, 92 and 94 and following of *The Environmental Quality Act* (“the *E.Q.A.*”);
 - C. Whether the repeated flooding and pollution described herein contravene art. 20 *in fine E.Q.A.* since they “porte atteinte au confort de l’être humain”;
 - D. Whether the flooding and resulting pollution constitute neighbourhood annoyance beyond reasonable and/or intolerable levels such as to trigger the provision of Art. 976 the *Quebec Civil Code*, additionally if that flooding constitutes a fault, was it intentional and whether

the governmental Defendants were complicit therein, such that punitive, exemplary and treble damages are warranted;

E. Whether Defendants:

- iii) committed willful errors, acts and omissions with regard to flood damage protection such that their liability is *solidary* or *in solidum*;
- iv) are, as a result of the foregoing, liable to punitive or exemplary damages due by operation of Section 49 of the *Quebec Charter* as well as by operation of Section 24 (1) of the *Canadian Charter of Rights and Freedoms* for unlawful and intentional breaches of fundamental Charter rights;

F. Whether the drainage system of Mercier-Hochelaga-Maisonneuve and Ville-Marie is a “thing” under the custody of the City of Montreal and Mayor of Mercier-Hochelaga-Maisonneuve and Mayor Plante under arts 1457 and 1465 CCQ, and whether the defendants are consequently strictly liable for the damage caused by autonomous acts of the drainage system;

G. Whether, even if Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas* and *Ciment St-Laurent*;

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

I. Given the “serious, precise and concordant” facts alleged is this Honourable Court justified in coming to a presumption of fact that the flooding is a result of improper/insufficient drainage system and a failure to properly maintain it;

J. Whether Defendants were at fault for failing to properly maintain/or upgrade the water infrastructure.

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K. As the flooding issue was repeatedly raised at Municipal meetings, as indicated in **Exhibits R-2 A, B and C and 17-C**, the Defendant Mayors were negligent and/or at fault for their inaction;

L. Whether the class should be defined as:

All persons, physical or moral (with less than 50 employees in the 12 months), owner, tenant or subtenant of moveable property in Montreal the quadrangle bounded by the streets encircled by a perimeter running from the corner of Saint Catherine and Ave de Lorimier north to the intersection of Ave de Lorimier and Rue de la Rouen, East to the intersection of Rue de la Rouen and Rue Chapleau,

North to Rue Chapleau and Rue Hochelaga, East to the corner of Hochelaga and Avenue Letourneux, South to the corner of Ave Letourneux and Sainte Catherine, and West to the corner of Sainte Catherine and Ave de Lorimier (shown in blue on exhibit). In a separate area encircled by a perimeter running from the corner of Dickson and Rosemont, East on Rosemont to Rue Du Quesne, South on Rue Du Quesne to Rue de Jumonville, West to rue Dickson and North to Blvd Rosemont.

MONTREAL, this 10th day of March, 2023

CHARLES O'BRIEN
Lorax Litigation for Representatives

SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

TAKE NOTICE that the Petitioner have filed this application in the office of the Superior Court of the judicial district of Montreal.

Defendants' Answer

To file an answer to this application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 15 days of service of this motion. The answer must be notified to Lorax Litigations.

Failure to Answer

If you fail to file an appearance within the time limit of 15 days, a judgment by default may be rendered against you without further notice and you may, according to circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- Negotiate a settlement;
- Propose mediation to resolve the dispute;
- Defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons
- Propose a settlement conference.

If you file an appearance, the application will be presented before the Court **on a date and in a room to be determined** by the Court. 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 in Warranty's advocate on a timetable for the orderly progress of the proceeding.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff. If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

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

Exhibit R-1: The Affected Area

Exhibit R-2: Videos of council meetings

Exhibit R-2A:

Exhibit R-2B:

Exhibit R-2C:

Exhibit R-3: Courriel de Arcelle Appolon - Access to information 19 Jan 2023

Exhibit R-4: Etienne Bouchard Exhibits

R-4A: Etienne Bouchard-Lamontagne - Historique inondations
R-4B: Négation de responsabilité
R-4C: Etienne Bouchard-Lamontagne - letter of notice
Exhibit R-5: Sign up list
Exhibit R-6: Etienne Bouchard-Lamontagne pictures R-6A through R-6H
Exhibit R-7: Inspection pictures Jan 24 2023 R-7A through R-7F
Exhibit R-8: flooding events access to information Hochelaga
Exhibit R-9: Inspection Feb 12 2023 Ecole Primaire Baril (Geyser location)
Exhibit R-10: Print articles
Exhibit R-11: 2022-12-02 13 H 30 - Commission sur les finances et l'administration
Exhibit R-12: Mirelle Dufresne – Supporting documents
Exhibit R-13: Julie Desrosiers – Supporting documents
Exhibit R-14: 2017_PACCAM_2015-2020_MEASURES
Exhibit R-15: Access to information maps
Exhibit R-15A: Access to information Stream Locations
Exhibit R-15B: Access to information Plan AQ
Exhibit R-15C: Access to information Plan EG
Exhibit R-15D: Access to information Stream locations PA2503 with outline
Exhibit R-16 : Quebec's "Guide de Gestion des Eaux Pluviales"
Exhibit R-17: Veronique St. Onge
Exhibit R-17A: Gmail - Message pour tous les copropriétaires
Exhibit R-17B: Square-Budget 2022-2023-2
Exhibit R-17C: Question video at 18 35
Exhibit R-17D thru R-17J: pictures of September 13, 2022 flooding event
Exhibit R-18: Denial of Coverage for Mirelle Dufresne.

Montreal, Quebec, this 10th day of March 2023.

Charles O'Brien
Lorax Litigation for Petitioners