

No:

Doran Smith and Ilana Grostern
5285 Connaught Ave
Montreal ,QC H4V 1X5;

Lynda Hoffman
5285 O’Bryan Avenue, Notre-Dame-de-Grace
Quebec, H4V 2A8;
and
Madison Foster
5335b Patricia Ave, Notre-Dame-de-Grace
Quebec, H4V 1Z1

Applicants

-vs-

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 Notre-Dame-de-Grace
 Gracia Kasoki Katahwa
 borough office
 5160 Boul. Décarie, bureau 600
 Montréal, QC H3X 2H9

Defendants

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

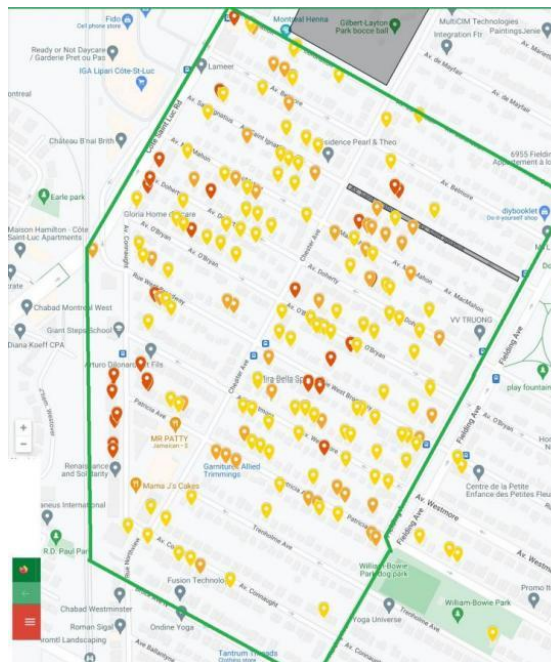
(Articles 509 ff and 571 ff., C.C.P.)

APPLICANTS RESPECTFULLY SUBMITS:

1. Applicants Ilana Grostern, Doran Smith, Lynda Hoffman And Madison Foster (representative for the sub-class of involuntary insurers) wish to institute a class action on behalf of the natural persons forming part of this class, of which the Applicants are members. The claim relates to flooding and infiltration from ground water in Notre-Dame-de-Grace (NDG) to members whose property, place of residence, assets, business(es) were affected, damaged, lost or destroyed, suffered stress, or were otherwise affected as a result of the flooding event that occurred on July 13, 2023 and December 17, 2023. The proposed class definition is:

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 area encircled by the streets starting at the intersection of Cote-Saint-Luc road and the train tracks at coordinates (45.46266575284422N, 73.65611229380974W) going north-north-east on Cote-Saint-Luc road to the intersection of Cote-Saint-Luc road and Coronation street, from there going south-east on Coronation street to its intersection with Fielding avenue, from there going south west on Fielding avenue to Brock avenue North to it's end and following a line continue from there north-west another 55 meters to the train track and then going north back to the starting point at (45.46266575284422N, 73.65611229380974W), the Intersection of Cote-Saint-Luc road and the train track as shown below in **Exhibit R-1**. From December 21, 2020 to the publication of Notices.

See **Exhibit R-1 The Affected Area** (outlined in green)



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 December 21 2020;

B. Persons who have owned property in The Affected Area, Quebec since December 21 2020;

C. Involuntary insurers - condo owners who were not flooded but live in the same building as those flooded and have to pay additional condo fees to pay for flooding damage and others who lost insurance coverage or whose premiums were raised due to flooding in the Affected Area since December 21, 2020.

3. Letters notifying the City of Montreal of both flooding events (letters of notice) and providing pictures of the damage were sent to the City of Montreal by the Representatives, See **Exhibit R-4A** dated July 20, 2023, **Exhibit R-4B** dated July 20, 2023 and letters for December 17, 2023. Both letters detail 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. Approximately 130 letters of notice were sent from residents of NDG about their flooding on July 13, 2023 to the City of Montreal. See **Exhibit R-8**. Another 5 notice letters have been brought to Representative Ilana Grostern's attention since the December 18th 2023 water infiltration.



5. The area, Notre-Dame-de-Grace ground water table is exacerbated by an underground stream, or ruisseau, see **Exhibit R-11C** and **Exhibits R-11A** and **R-11B**.

Two articles were written about the issue of the flooding, see **Exhibit R-5A**, **Exhibit R-5B**,

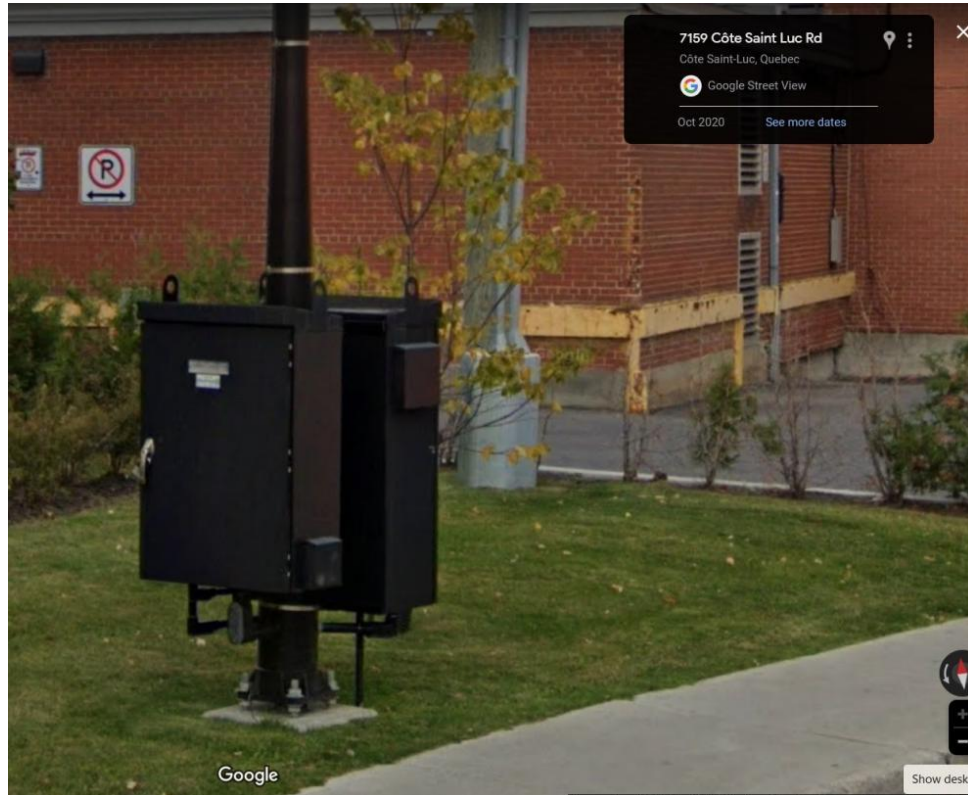
both written on August 2, 2023 reports of flooding occurring in NDG on July 13, 2023 and a third written on August 30, 2023, see **Exhibit R-5C**. A study shows that urbanization cumulates with natural runoff to magnify the impact of urban flooding, see **Exhibit R-13: Urbanization impact paper**.

6. News reports documented the extensive flooding and damage, see **Exhibit R-18 Video Reports**.

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 July 13, 2023 and infiltration on December 18, 2023.
- B. Doran Smith and Ilana Grostern 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. Doran Smith and Ilana Grostern encountered many living in the Notre-Dame-de-Grace borough who express feelings of anger and sorrow that the Mayor and Borough of Notre-Dame-de-Grace has not taken any significant action to protect them from the flood problems caused by insufficient "secondary water infrastructure" including storm drains, sewers and catchments in the area and ill maintained systems. They and 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 of the primary and secondary water infrastructure within the meaning of Art. 976 C.C.Q. and have suffered unreasonable and intolerable annoyance due to its improper maintenance, insufficient capacity and age.
- E. The Defendants have control over flooding and infiltration and were negligent in not stopping or curtailing the water damage alleged herein;
 - a. Class members suffer from the cumulative effects of flooding produced and emitted by Defendants including the willful blindness, gross negligence, failure to protect citizens' fundamental rights and failure to inspect, 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.
 - c. The stream Aquaduc map obtained through an access to information request, **Exhibit R-10C**, clearly shows there is a main Aquaduc running directly through the affected area which failed to drain the surface water adequately.

- d. **Exhibit R-11C**, a map obtained from Montreal in an access to information request, clearly shows that there is also an underground river or ruisseau running directly along the flood zone.
- e. Located in front of the Chateau B'nai Brith at coordinates (45.4643289N,73.6557167W) there is a control system, see **Exhibit R-15A, R-15B Control System**, which residents report exploded just prior to the flooding incident and that many city workers seemed to be extremely concerned with and worked on it until the water suddenly drained.



F. The Defendant City (for primary and secondary infrastructure), and Mayor Gracia Kasoki Katahwa vicariously liable (for secondary infrastructure) by their gross negligence and bad faith, have intentionally contravened Articles 1, 6, 7, 46.1, 48 and 49 of the *Quebec Charter of Human Rights and Freedoms* CQLR c. C-12. In the *Dufresne v. City of Montreal* Collective Action (500-06-001229-232), Defendant City’s expert alleges that secondary infrastructure maintenance and management are the responsibility of the Borough as stated at paragraph 6(b) of Mohamed Osseyrane’s Affidavit, see **Exhibit R-20**, ”Les reseaux d’egouts secondaires sont la propriete de la Ville de Montreal **et leur gestion et entretien** relevent essentiellemnt **des arrondissements** [emphasis added].” Defendant Mayor Katahwa, elected November 7, 2021 (**Exhibit R-19**) has, since that date controlled the Borough and is vicariously liable for its omissions as concerns inadequate infrastructure.

- G. Defendant Mayor Gracia Kasoki Katahwa has admitted there is a problem on a facebook post, **Exhibit R-17** dated August 18, 2023.
- H. Rather than replace infrastructure, Defendants blame 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. Defendants are liable for the urban sprawl which turns roads into rivers. The City and Borough have historically preferred development, thus enlarging their tax base, but have not invested in the requisite commensurate stormwater upgrades¹.
- I. 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, as set out herein.
- J. The Defendants' liability for damage caused by the autonomous act of 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**;
- K. The Defendants have and continue to commit faults such as failure to inspect, maintain and upgrade primary and secondary infrastructure, 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;
- L. The Defendants failed to properly award a contract for maintaining the sewers and basins and as a result the system was neglected due to fraud from the illegitimate contractor,

¹ 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 changed 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 their inaction has caused.

see **Exhibit R-14**. The Defendant City is liable for issuing fraudulent and faulty contract and sludge was not removed, exacerbating the flooding which fault was intentional.

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.

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 585 (8) of the *Cities and Towns Act*;

P. Applicants have, since July 13, 2023, indicated that considerable remediation and corrective work has been done since they began publicly complaining about the dilapidated and outdated state of water infrastructure in NDG and Montréal West. The considerable press coverage and the large number of notice letters sent to the Clerk of the City have been a result of Applicants' tireless work. They say that the preparation of these proceedings and Applicants' public outreach have shamed the Defendants to action. But for Applicants' efforts, this work would not have been performed in a timely manner. This may explain the approximately 30 victims on December 18, 2023. Time will tell to what extent works to date suffice to resolve the problem.

8. The facts giving rise to the personal claim of Doran Smith and Ilana Grostern are, in addition to those in sub- paragraphs 7.A to 7.P, as follows:

- A. Doran Smith and Ilana Grostern reside in the affected area which was flooded on July 13th, 2023. She has owned the family home since November 2017. This is their first flooding event.
- B. They have experienced material losses due to flooding events;
- C. They have experienced monetary losses due to flooding events;
- D. The flooding caused prejudice to the property;
- E. They were underinsured and had to contribute to the cost of repair for flood damage;
- F. They have lost the use of the basement for an indeterminate amount of time, rendering them unable to see clients at home.
- G. Their son has lost the use of his personal space and bedroom and the family has had to reduce their living space.
- H. They filed a Notice pursuant to the Cities and Towns Act within the 15 day delay, see **Exhibit R-4C**, provided for by article 585, and was denied coverage by the City.
- I. They have had extreme stress due to this flooding event and is fearful every time it rains.
- J. While they have since installed backflow preventers, following a report from the city inspector, they say it would not have made a difference as concerns this flooding as evidenced by the many neighbors who had multiple, functional backflow valves and still got flooded, nor, given the jurisprudence of the Supreme Court of Canada, are they obliged to do so. Furthermore, as they were again inondated on December 18, 2023 the backflow preventer's

installation provided no comfort.

- K. At approximately 5:15pm on July 13, 2023, Mr. Smith watched with his family as water began to spew through a drain in the basement, pour from the toilet, and bubble up through the bath drain. The water carried with it a black substance that he was able to identify as sand or dirt. The infiltration paused for a short period of time, but at 6:00pm picked up again, leaving the entire basement and all contents submersed in at least six inches of water, dirt, and sewer bacteria. At 6:15pm, the water suddenly began to drain *as if a plug had been pulled*, and by 6:30pm the water was all gone, leaving behind a mess of sand, dirt, and dead leaves. While the water infiltration was happening, Mr. Smith went out onto the street and saw that every other resident on the block with a basement residence was desperately trying to remove the water and save personal belongings. Later on that evening and the next morning, Mr. Smith walked around the neighborhood and determined that the quadrilateral defined by Connaught ave, Cote St Luc Road, Coronation Ave, and Fielding Ave, was all subject to the same volume of water, and that in some areas the water was so high as to flood the street and fill basements of a height of four feet.
- L. Mr. Smith's wife, Ilana Grostern, put in an immediate call to the insurance company to open a claim. Under normal conditions, a sewer flood would warrant a visit from an apres sinistre company within 24 hours, and result in immediate demolition and sanitization of the entire basement. However, due to the large number of affected residences in the area, no clean up crew was available until 5 days later, at which point all that was done was a general cleanup and dehumidifiers were left on site. The insurer was not able to send an adjuster until July 31, 2023, and a decision to pay out the coverage was only made by L'Unique on August 18, 2023, more than a full month after the flood occurred. Mr. Smith and his family were left with a moulding basement and personal goods for an exceptional period of time. As well, out of pocket estimates to demolish, sanitize, and rebuild the family space far exceed the coverage from the insurance company. As of mid-October, and despite actively attempting to restore the space to functionality, his basement remains only partially usable and he still cannot welcome clients into his home work space.
- M. While the city's immediate response was "no city in the world could have handled this volume of water", newspaper archives dating back to 1938, see **Exhibit R-9**, demonstrates that the rain that fell on July 13, 2023, was not unusual or unprecedented, and that there is a long history of the city failing in its duty to appropriately and adequately update and maintain the infrastructure served by the Chester Ave. sewer.
- N. They also maintain that they had not seen any sewer cleaning trucks with the exception of March 27 and after when they called to complain about sewer smell infiltrating the basement and the house. They report that since the flood, they have seen many sewer cleaning trucks in the affected area. As well, the sewers near their home continue to emit foul odours periodically, despite the city's attention to same.
- O. In addition to other damages claimed both material, moral and psychological, they seek compensation for the additional insurance premiums they have had to pay as a result of the Defendants failure to address its inadequate and ill maintained infrastructure
- P. Mr. Smith documented the flooding and took pictures, see **Exhibit R-6A** thru **R-6D Smith pictures**.
- Q. They on behalf of other class members and Order of this Honourable Court, that the City to be ordered to complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.
- R. Representatives Doran Smith and Ilana Grostern have had limited time to survey class

members who again suffered further inundation on December 18, 2023, a copy of their December 18, 2023 Notice to the Clerk of the City, attached as **Exhibit R-4D**.

- S. As a result of heavy rainfall on the property the ground water became saturated and water leaked in through the back wall of their basement. The rain was not sufficient to justify this degree of infiltration indicating the incapacity of the current infrastructure to handle the water and move it away from their home. This ingress occurred despite there having installed backflow preventers as required by the city. The continuing stress since July 13, 2023 flooding compounds their concern of the current situation. This flooding occurred while they were still in the process of trying to finish the basement after the previous flooding event on July 13 which caused them enormous stress.
- T. They have compiled four Notices sent to the clerk of the City, and say that while they know that approximately thirty other people were affected, they cannot provide a proper estimate at the present time. They also say that people are reticent about making claims as they have lost confidence that the city or the borough will do anything to resolve the problem or compensate them in any way for their loss.

9. The facts giving rise to the personal claim of Lynda Hoffman are, in addition to those in subparagraphs 7.A to 7.P, as follows:

- A. Lynda Hoffman owns property in the affected area which was flooded on July 13th, 2023.
- B. Lynda has experienced material losses due to flooding events;
- C. She has experienced monetary losses due to flooding events;
- D. The flooding caused prejudice to Lynda Hoffman's property.
- E. She was underinsured and had to contribute to the cost of repair for this flood damage.
- F. She has had extreme stress, due to this flooding event and is fearful every time it rains.
- G. She filed a Notice pursuant to the Cities and Towns Act within the 15 day delay, see **Exhibit R-4A**, and was denied coverage by the City's Adjuster Ceurrier et Ass.
- H. While She has not installed backflow preventers, she says it would not have made a difference as concerns this flooding, nor, given the jurisprudence of the Supreme Court of Canada, is she obliged to do so.
- I. She says that as concerns the flooding which occurred on September 13, 2022, the residential property located at 5285 O'Bryan Ave. suffered material flooding damage and that she suffered significant moral damages.
- J. She, like the other representatives, specifically seeks immediate injunctive relief to order the

Defendant 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*.

K. Since acquiring her property in July 2008 she has not experienced flooding. This is her first flood.

L. At exactly 5:15pm on July 13, 2023, Lynda had arrived home through torrential rains. She sat down in the living room. Her neighbour called at 6pm asking if she'd been flooded. At that time she went down to the basement and noticed water levels had risen to the basement stairs. Around 6:15pm she went back down and *discovered that all the water had suddenly drained*. When she first saw the water in the basement, there was at least a foot and a half of water, and everything was floating. Very heavy items such as paint cans, and boxes of heavy books were floating in the water and had moved about ten feet from where they had originally been located. The water was black and she observed pieces of brown debris floating in it, which leads her to believe that the fetid water came from the toilet. The water had a foul odour, indicating the presence of sewage. The water also entered her home from street level, coming down the driveway into the garage, and subsequently into the basement, see pictures **Exhibit R-23A** thru **R-23E**. Once the flood waters had receded she was able to see the watermark on the garage door which indicated that it had risen to a height of approximately 1 foot. The interior wood frame of the garage door appeared damaged from the pressure of the water.

M. Lynda's material losses from the flood include but are not limited to - furnace, water tank, freezer, washer, dryer, three legal-size filing cabinets, a large wardrobe, shelving, food, all office supplies, five floor to ceiling glassed in bookcases, her husband's legal materials purchased over years, a music collection of about 400 LPs, 1500 CDs, worth approximately \$50,000.

N. Lynda's intangible losses include - baby photos of her deceased son, family heirlooms, family histories, and the many hours she had to spend sifting through these items. She cannot begin to quantify the extent of the shock that she suffered having to sort through these personal losses. She has suffered further indignity because the city had not responded to additional help to clear the debris from her basement with extra garbage pickup from her property. She had to deal with

individuals coming in the night to dig through her soiled debris and spreading it on the street, resulting in her having to clean it up a second time. Lynda's back condition has been exacerbated not only by the stress of her situation, but by the extra physical labour as well.

O. Her monetary losses include the time spent cleaning out and managing her losses. She has been working 13 hour days sorting through and removing soiled materials from her basement in order to prepare it for demolition and rebuilding for which she claims \$25/hour for a total of \$5,000. She is on her own as her husband has suffered such severe emotional shock from the flood that he remains in hospital awaiting stabilization, and she had to return to work as of Monday, August 21, 2023, further limiting her capacity to deal with the outcome of flood. As well, as her husband is in the hospital he is unable to work, and she is unwilling to stress him out further by asking for more money, putting her in an untenable financial position. She has had to hire help, including her daughter and two other men to help her pull out the debris. She estimates the cost to rebuild her basement all told is approximately \$63,000 with further costs associated due to the flood e.g. storage rental, trucks, equipment, men, etc.. (The cost of changes outside to the pit etc. \$7,500.00. Her insurance has covered her for \$50,000. The total cost to restore her basement to functionality take further preventive measures against any flooding to the exterior of the garage was \$120,431.70. She claims an additional \$4,000 for intangible loss of property of sentimental value to her.

P. Due to the stress of the flooding Lynda's husband Lynda has suffered severe mental health problems and is currently in hospital. The damages caused by this flood are extensive and ongoing. Lynda's husband was discharged as of August 11th, 2023.

Q. She, 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 Forest c. Laval, 1998 Can L11 13038 (QCCA), [1998], RRA 953; Ste-Anne-de-Beaupre (Ville de) c. Cloutier 2016 QCCA 245; and Ville de Sainte-Anne-de-Beaupre c. Cloutier 2019 QCCA 712.

R. While she was not inundated December 18, 2023, she did suffer stress as a result of the heavy

rain on December 17 and 18.

10. The facts giving rise to the personal claim of Madison Foster are, in addition to those in subparagraphs 7.A to 7.P, as follows:

- A. Madison Foster, at the time an administrative agent at the Jewish General Hospital resided in the zone which was flooded on July 13th, 2023. She was a tenant at the time living at 5335b Patricia Ave . This is her first flooding event.
- B. She has experienced material losses due to flooding events, namely damage to personal belongings and the damage caused to the basement by water;
- C. She has experienced monetary losses due to flooding events, including most of her belongings, and moving expenses;
- D. She had to find new accommodations and had to live with her sister in Chateauguay immediately following the flood until September 1, 2023;
- E. She did not have tenant insurance and had to pay all replacement costs for personal belongings out of pocket;.
- F. Her young son was impacted as he had to be pulled out of day camp, and will have to switch schools in the fall as Madison cannot afford to rent on the island of Montreal due to skyrocketing rental rates and lack of housing. She now lives in Mirabel and also had to change jobs to accommodate her new location.
- G. She filed a Notice pursuant to the Cities and Towns Act within the 15 day delay, see **Exhibit R-4B**, and was denied coverage by the City within two weeks.
- H. She has had extreme stress due to this flooding event and as a result her rental options are further restricted as every time she visited a basement apartment she found herself reactive and fearful.
- I. At 5:06pm the water began to pour into Madison's basement apartment. Madison texted her landlord, who was not on site as she was stuck on the highway due to the street flooding, who advised her to call 911. At 5:10pm she called 911. She was placed on hold for 10 minutes, at which point she was told they would send someone. No one showed up. Madison and her son frantically tried to pack up their things and get them off the floor before the water destroyed them. They attempted to get some water out of the basement but it was coming in too quickly. The upstairs neighbour invited them in to take shelter. The water was coming in through the front door and the drain at the back door, as well as the shower and the toilet. It also came in from the sloped driveway into the garage, and from the garage into the basement. The rate of water entry was quite rapid and by 6pm the water had risen to a height of 1 foot, and all of Madison and her son's belongings were soaked with sewer water. By 6:15pm the water levels began to rapidly recede, and by 6:20pm all water was drained from the basement apartment, except where the drain was where water had pooled and wasn't draining. The entire apartment and all the contents were covered in black, stinking mud.
- J. At 11pm Ms. Foster received a phone call from the fire department but did not answer as she was sleeping at her sister's. When she called back to ask for the report she was told they did not write it because there were too many people needing help, and as a result could not seek help from the Red Cross due to lack of file number and no incident report.
- K. She applied for Quebec financial aid but was declined immediately due to lack of insurance, and due to the fact that her area was not and still has not been declared an emergency zone.
- L. She took pictures of the flooding and damage, see **Exhibit R-7A** thru **R-7G Madison Foster Pictures** and video, see **Exhibit R-24 Madison Foster video**.

- M. On September 2, 2023, she had to move (for a second time) to Mirabel as she had nowhere to live, adding further to her stress.
- N. She on behalf of other class members and Order of this Honourable Court, that the city to be ordered to complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.

11. The sub-class of owners in particular have faced, in addition to the facts alleged in 7.A to 7.O, damage to property, loss of insurance coverage or increased premiums, and in some cases, added difficulty in finding tenants, and decreased value of their rental properties and, therefore, stress and respiratory distress and loss of income.

12. The sub-class of tenants in particular have faced, in addition to the facts alleged in 7.A to 7.O, loss of enjoyment of property, stress and respiratory distress.

13. The sub-class of involuntary insurers, as condos are no longer insured and are being forced to share the risk of their co-owners flooding damage and pay additional condo fess to subsidized those flooded.

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

14. 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 Mayor and the City, dated starting in July, 2023 and circulated by Doran Smith, signed by approximately 40 City residents filed by Applicant Doran Smith is produced herewith as **Exhibit R-2**.
- B. A collection of pictures taken by Doran Smith during repeated flooding events in Notre-Dame-de-Grace is produced herewith as **Exhibit R-6 Doran Smith pictures**.

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

15. 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, loss of sentimental property, 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 Defendants are Applicant’s neighbors of the infrastructure and if that is the case whether Defendants are liable for neighbourhood annoyance.
- E. 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;
- F. 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;
- G. Whether the drainage system of Notre-Dame-de-Grace is a “thing” under the custody of the City of Montreal (for primary and secondary infrastructure) and Mayor Katahwa of Notre-Dame-de-Grace (for secondary infrastructure) 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;
- 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 primary and secondary drainage system and a failure to properly maintain it;
- J. Whether Defendants were at fault for failing to properly inspect, maintain/or upgrade the water infrastructure.
- K. Whether as concerns actions and omissions for secondary infrastructure is the Defendant Mayor is vicariously liable.
- 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 area encircled by the streets starting at the intersection of Cote-Saint-Luc road and the train tracks at coordinates (45.46266575284422N, 73.65611229380974W) going north-north-east on Cote-Saint-Luc road to the intersection of Cote-Saint-Luc road

and Coronation street, from there going south-east on Coronation street to its intersection with Fielding avenue, from there going south west on Fielding avenue to Brock avenue North to it's end and following a line continue from there north-west another 55 meters to the train track and then going north back to the starting point at (45.46266575284422N, 73.65611229380974W), the intersection of Cote-Saint-Luc road and the train track . The class period runs from December 21, 2020 to the publication of Notices.

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

16. 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 one thousand, see **Exhibit R-3 population estimate**, 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.
- 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

17. 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 \$10,000 for moral damages including loss of property of sentimental value, 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 Honourable Court deems appropriate.

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

18. The Applicants Doran Smith and Ilana Grostern request that they be ascribed the status of Representatives.

19. The Applicants Doran Smith and Ilana Grostern are in a position to represent the members adequately, for the following reasons:

- A. They live in a neighbourhood directly affected by the flooding and resulting pollution described herein and have been a victim of the flooding and resulting material, moral damage and stress in Notre-Dame-de-Grace.

- B. They have taken numerous steps to acquaint themselves with the nature of the problems created as a result of the flooding and are 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. They went door to door discussing in great detail the flooding with about 300 class members;
- D. They gathered the 40 names, addresses and phone numbers of persons who have been affected by flooding, see **Exhibit R-2**, and also gathered information on the nature of the various harm and inconvenience suffered by those persons;
- E. They possess 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. They have acquainted themselves with the concerns of each of the Affiants and have been present and involved at every stage of the proceedings;
- G. They have witnessed the impact of the flooding on other class members, including the anxiety and stress and fear and took pictures during the July 13 2023 flooding event, and December 18, 2023 inundation, see **Exhibits R-6**.

20. The Applicants Madison Foster and Lynda Hoffman are 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 NDG;
- B. She has been directly affected by the flooding as she lost significant property and was not insured adequately;
- C. She was a tenant in the affected building but has had to leave due to flood damage.
- 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 July 13 2023 flooding event, see **Exhibits R-7**;
- G. She has no conflict of interest with the other representative plaintiffs;

21. 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 Notre-Dame-de-Grace 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 Doran Smith and Ilana Grostern, Lynda Hoffman, Madison Foster, the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class:

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 area encircled by the streets starting at the intersection of Cote-Saint-Luc road and the train tracks at coordinates (45.46266575284422N, 73.65611229380974W) going north-north-east on Cote-Saint-Luc road to the intersection of Cote-Saint-Luc road and Coronation street, from there going south-east on Coronation street to its intersection with Fielding avenue, from there going south west on Fielding avenue to Brock avenue North to it's end and following a line continue from there north-west another 55 meters to the train track and then going north back to the starting point at (45.46266575284422N, 73.65611229380974W), the Intersection of Cote-Saint-Luc road and the train track. The class period runs from December 21, 2020 to the publication of Notices ;

22. **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, loss of sentimental property, 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 Defendants are Applicants neighbors of the infrastructure and if that is the case whether Defendants are liable for neighbourhood annoyance;
- E. 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;
- F. 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 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;
- G. Whether the drainage system of Notre-Dame-de-Grace and Ville-Marie is a “thing” under the custody of the City of Montreal (for primary and secondary infrastructure) and Mayor Katahwa of Notre-Dame-de-Grace (for secondary infrastrucutre) and 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;
- 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 systems and a failure to properly maintain it;
- J. Whether Defendants were at fault for failing to properly maintain/or upgrade the water infrastructure.
-
- K. Whether as concerns actions and omissions for secondary infrastructure is the Defendant Mayor is vicariously liable.
- 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 area encircled by the streets starting at the intersection of Cote-Saint-Luc

road and the train tracks at coordinates (45.46266575284422N, 73.65611229380974W) going north-north-east on Cote-Saint-Luc road to the intersection of Cote-Saint-Luc road and Coronation street, from there going south-east on Coronation street to its intersection with Fielding avenue, from there going south west on Fielding avenue to Brock avenue North to it's end and following a line continue from there north-west another 55 meters to the train track and then going north back to the starting point at (45.46266575284422N, 73.65611229380974W), the Intersection of Cote-Saint-Luc road and the train track. The class period runs from December 21, 2020 until the publication of Notices.

MONTREAL, this 21st day of December, 2023

CHARLES O'BRIEN
Lorax Litigation for Applicants

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

Filing of a judicial application

TAKE NOTICE that the Applicants 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-1A: Map of affected area general

Exhibit R-1B: Map of zone detailed

Exhibit R-2: List of affected people

Exhibit R-3: Population estimate

Exhibit R-4: Letters of Notice for flooding on July 13 and December 13, 2023

R-4A: Lynda Hoffman notice
R-4B: Madison Foster notice
R-4C: Ilana Grostern notice
R-4D: Doran Smith notice
Exhibit R-5: News articles
Exhibit R-6: Smith Pictures R-6A thru R-6D
Exhibit R-7: Foster Pictures R-7A thru R-7G
Exhibit R-8: Letters of notice picture
Exhibit R-9: Archival newspapers
Exhibit R-10: Aquaduct map
 Exhibit R-10A: I-VDM-1.1 - Plan des bassins versants et des pluviomètres
 Exhibit R-10B: City supplied map of storm drain system
 Exhibit R-10C: City supplied map of storm drain system with overlay area
Exhibit R-11: Stream map
 Exhibit R-11A: Access to information Stream locations PA2503
 Exhibit R-11B: Stream location detail NDG
 Exhibit R-11C: Stream location detail NDG with area shown
Exhibit R-12: Record of street cleaning and repairs
Exhibit R-13: Urbanization impact paper
Exhibit R-14: Report on catch basins fraud
Exhibit R-15A: Control system picture
Exhibit R-16: Guide Pluvial
Exhibit R-17: Mayor admitting problem facebook
Exhibit R-18: Video news reports
Exhibit R-19: Mayor Katahwa - Côte-des-Neiges–Notre-Dame-de-Grâce - Wikipedia
Exhibit R-20: Mohamed Oseyrane report
Exhibit R-21: Mayor response email
Exhibit R-22: Council meeting video
Exhibit R-23: Lynda Hoffman pictures R-23A thru R-23E
Exhibit R-24: Madison Foster video

Montreal, Quebec, this 21st day of December 2023.

Charles O'Brien
Lorax Litigation for Petitioners