

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(“Class Action”)
SUPERIOR COURT

No:

Mathieu Guilbault
3-2276 rue Victoria, Lachine QC H8S 1Z3
Lesley Kotnjek
2-2276 rue Victoria, Lachine QC H8S 1Z3
Olivia Palamaro
1-2240 rue Victoria, Lachine H8S 1Z3
Stephane Groulx
1-2268 rue Victoria, Lachine H8S 1Z3

Applicants

-vs-

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

And

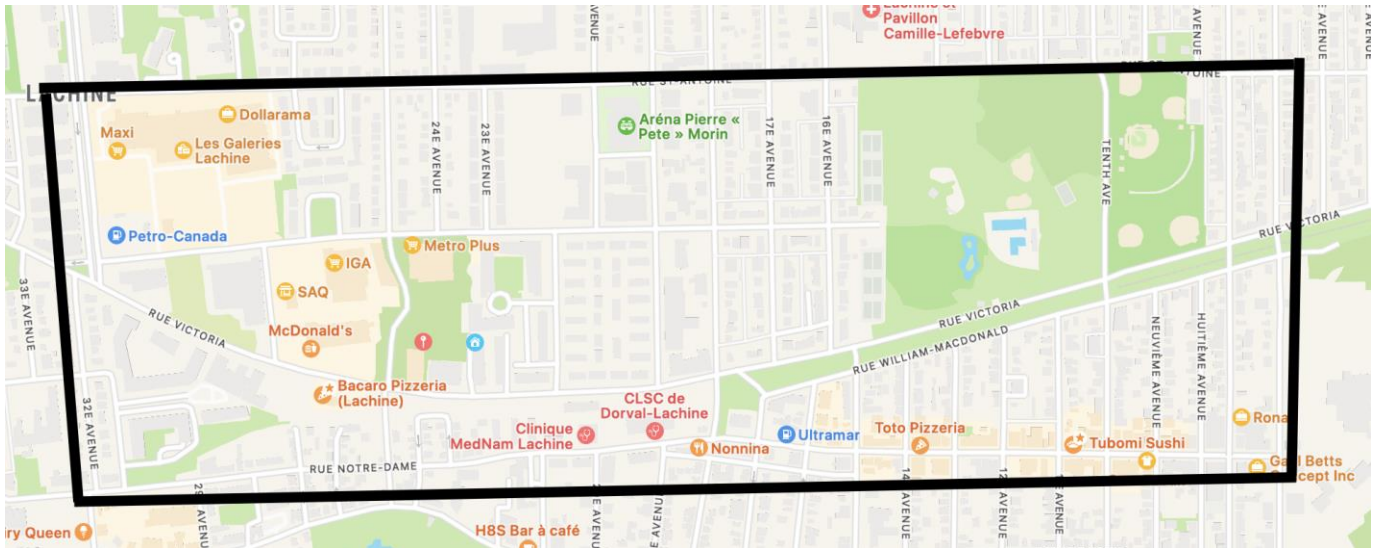
The Mayor of Lachine
 Maja Vodanovic
 borough office
 1800 Boul. St-Joseph
 Lachine, QC H8S 2N4

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVES and
INJUNCTION TO CORRECT MUNICIPAL SEWER INFRASTRUCTURE**
(Articles 509 ff and 571 ff., C.C.P.)

APPLICANTS RESPECTFULLY SUBMIT:

1. Applicants Mathieu Guilbault, Lesley Kotnjek, Steph Groulx, Olivia Palaramo (representative for the sub-class of property owners and representatives for 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 claims concern damage to 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.
 - a. 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 west to east by 32th ave. to 6th ave. and bounded south to north by Notre-Dame Street to St. Antoine street as shown below in **Exhibit R-1**. See **Exhibit R-1 The Affected Area**; (outlined in **black**) from October 1, 2019, until the publication of notices.



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 October 1, 2019;
 - B. Persons who have owned property in The Affected Area, Quebec since October 1, 2019;
 - C. Involuntary insurers - condo owners or members who live in the same building as those flooded and have to pay additional condo fees or insurance to pay for flooding damage and those in the Affected Area whose insurance premiums were raised from October 1, 2019.
3. Letters notifying the City of Montreal of the flooding (letters of notice) and providing pictures of the damage were sent to the City of Montreal by the Representatives, **Exhibit R-4A** dated July 14, 2023, **Exhibit R-4B** dated July 18, 2023, **Exhibit R-4C**, dated July 20, 2023, **Exhibit R-4D** dated July 20, 2023. All four letters detail the essentials of the issue and inform the

City of the Applicants' intention to institute a class action should the situation not be resolved, or compensation not be paid.

4. Approximately 46 letters of notice were sent from residents of Lachine about their flooding on July 13, 2023 to the City of Montreal. See **Exhibit R-12A** Notices to the City.

5. News reports documented the extensive flooding and damage, see **Exhibit R-5 Video Reports**.

FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY THE APPLICANTS

6. The facts on which the Applicants' personal claims against the Defendants are based:

- A. There have been flooding problems in the Affected Area in Lachine. These repeated events have taken place twice in less than 5 years, most recently July 13, 2023.
- B. Mathieu Guilbault 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. Mathieu Guilbault has encountered many living in the Lachine borough who express feelings of anger and sorrow that the Mayor and Borough of Lachine has not taken any significant action to protect them from the flood problems caused by insufficient storm drains and catchments in the area exacerbating development projects 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 of the infrastructure within the meaning of Art. 976 C.C.Q. and have suffered unreasonable and intolerable annoyance. Claims in neighbourhood annoyance require multiple on reasonable or excessive instances to be actionable. As the isolated October 1, 2019 flooding experienced by Representative Stephane Groulx could not ground a claim pursuant to article 976 C.C.Q., His right did not crystallize until a second flooding event occurred on July 13, 2023. The prescription of such a neighbourhood annoyance claim for flooding did not commence until July 13, 2023 and is therefore only prescribed on July 13, 2026.
- 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 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 1959 is insufficient and antiquated, see **Exhibit R-6** The plan shows the position of the main sewer and the services that will be connected to it. The profile view, at the top, shows the deepest part of the collector.

The collector serving Lachine is over 60 years old. This infrastructure probably met the needs of the time, but since then, the services connected to the collector have more than doubled. The asphalt surface has also more than doubled, while the street profile shown on **Exhibit R-6** has not been modified to meet new needs. Otherwise, on the profile view, one can see the profile of the roadway, which doesn't seem to have been modified since it was built in those years.

- c. The stream sewer map obtained through an access to information request, **Exhibit R-7**, clearly shows there is a main sewer running directly through the affected area which failed to drain the surface water adequately with the Victoria Collector. The sewer is overloaded. It doesn't have the required capacity to drain heavy rains, and the geometry of the street means that the sewer overflows into representatives' parking lots.

F. 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 four 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 that having occurred, as the City and Borough have historically preferred development, thus enlarging their tax base, but have not invested in the requisite commensurate upgrades¹.

G. In particular, Defendants have acted intentionally, willfully, negligently in their failure to recognize and protect citizens from the cumulative effects of flooding; As stated in the information document published in November 2018 “Lachine-Est is part of the Saint-Pierre drainage basin, which covers some 5,440 hectares and is served by a combined sewer system, where wastewater and rainwater are mixed.

¹In *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 so caused.

This network, designed some fifty years ago, has now reached its maximum capacity and needs to be replaced by wastewater infrastructure, including an overflow structure to discharge rainwater. Overflow structure that allows clean water to be discharged into the Lachine Canal via an outfall, the Rockfield outfall, located slightly east of the Canadian Pacific tracks. **Exhibit R-16 (OCPM Document) - In this document, you will find Mayor Maja Vodanovic on page 3 who was then in power.**

- H. The Defendants, well aware of the risks of flooding, have intentionally, willfully, negligently failed to protect citizens from the deleterious cumulative effects of flooding, causing them material, moral damages and stress. The City and Borough have been aware of the flooding issue for since at least 2012, know their infrastructure is outdated and rather than repair it, deceitfully blame the victims and now climate change.

“The Smoking Gun”

Defendant City commissioned a report be done on the Saint Pierre collector due to flooding in 2009 (the “Report”). The Report conducted by Genivar, **Exhibit R-19A** Évaluation hydraulique du collecteur Saint-Pierre, Projet no : 01048B was filed on February 3, 2012. The collector Saint-Pierre services Lachine and Notre Dame de Grace as well as other nearby boroughs.

On page 1(9) of the Report states “Several large-scale redevelopment projects are planned over the coming years in the limits of the Saint-Pierre watershed including the redevelopment of the interchange and the marshalling yard Turcot, the Jenkins and Pomminville housing development projects, as well as the establishment of the McGill University Health Center (MUHC). These projects must not be carried out without taking into account the capacities of the collection networks and the needs of the users connected to them. Furthermore, the Ministry of Sustainable Development, Environment and Parks (MDDEP) requires the maintenance, at their current levels, wastewater overflows into the St. Lawrence River during rainy weather. The increase in runoff caused by territorial development must be compensated by concrete measures aimed at achieving this requirement. To this end, the City of Montreal is planning the construction of a retention reservoir of approximately 55,000 m³ in Rockfield.” (our translation)

The Report also states “It is therefore appropriate to evaluate again with more precision and according to the most recent rules of the art, the functional state of the collection network. In the general context of the progressive redevelopment of this territory and the implementation of specific redevelopment projects, it is necessary to evaluate the current level of services, the nature of the problems and issues and the extent of the improvements to be made to the drainage network and establish drainage guidelines for this unit.” (our translation)

There is a very detailed description of how the evaluation and measurements were performed and then on page 67, figure 7.1, the Report provides a map which shows the state of the sewers and their capacity to deal with a 10 year maximum rainfall as it was in 2012. The red lines indicate the maximum flow is intolerable in our Representatives zone, see **Exhibit R-19B**.

Figure 9-1 on page 81(73) is a profile of the same area in Lachine and clearly shows where flooding is a problem. On the following page 82(74) is a profile of what the hydraulic system would be like if the City of Montreal implements the recommended changes.

Table 9-1 on page 75(83) lists the interventions which they recommend for the Lachine sector and the associated cost of each. The first recommendation is "Remplacement des tronçons déficients", "Replacement of deficient sections", where they list 22 interventions at a sub-total of \$94,479,564.

The second section orders five retention basins for a sub-total of \$174,450,000.

The last section recommends "Ouvrage de régulation", "Regulatory work" for a sub-total of \$1,400,000. The entire recommended upgrades and changes coming to a total of \$270,329,564 in 2012 dollars.

This work has still, over a decade later, not been performed. That omission constitutes gross negligence and exceptionally faulty behavior. Given Defendants presumed knowledge of the Report these omissions must be considered intentional, justifying punitive and *Charter* damages.

Defendants City and Mayor knew, or must be presumed to have known, the contents of the 2012 Genivar report concluding the City urgently required the construction of massive reservoirs and infrastructure upgrades to avoid continued flooding in the Lachine and NDG boroughs.

That the City and Mayors continued, nonetheless, to blame flooding on the victims alleging they required backflow preventers, climate change, knowing full well the proximate cause was inadequate and ill maintained infrastructure, or claims that they were unable to finance the requisite infrastructure constitute fraud. Fraud unravels all, including prescription, as indicated in the decision of Lord Denning in *Lazarus Estates v. Beasley*. Applicants are entitled to claim for all flooding events from the year 2012 forward and all additional the costs of insurance. As concerns claims pursuant to Art. 976 C.C.Q., prescription does not begin to run until the second flooding event.

As the City has stated, flooding events are becoming more frequent.

- I. 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-8 guide-gestion-eaux-pluviales**; As noted, Defendant mayoress is vicariously liable for secondary infrastructure. The city is liable for primary and secondary infrastructure.
- J. The Defendants have and continue to commit faults such as failure to inspect, maintain and upgrade 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;
- K. 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.

- L. 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;

7. The facts giving rise to the personal claim of Lesley Kotnjek are, in addition to those in sub- paragraphs 6A to 6L, as follows:

- A. Lesley Kotnjek rents out her unit to tenants in the affected area which was flooded on July 13th, 2023. She has owned the condo since 2020. This is her first flood.
- B. Her tenant has experienced material losses due to flooding events; such as their electrical car and personal belongings in the locker space.
- C. Her tenant has experienced large amounts of stress due to flooding events;
- D. The flooding caused prejudice to the property; **see Exhibit R-11 A**
- E. Her tenant lost their valuables (including those of sentimental value) in the basement locker and their car has been totaled due to flood damage;
- F. Her tenant has lost the use of the basement for an indeterminate amount of time
- G. She has received very graphic statements from her tenant mentioning, some owners being completely flooded, crying/screaming over the loss of their belongings... "This is happening so quickly people don't even have the time to pack up their things.
- H. She filed a Notice pursuant to the Cities and Towns Act within the 15 day delay, see **Exhibit R-4A**, provided for by article 585, and was denied coverage by the City.
- I. She has had extreme stress due to this flooding event and is fearful every time it rains. In the situation where she would lose tenants.
- J. Every unit has backflow preventers, she says 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, is he obliged to do so.
- K. At approximately 3:30 pm on July 13, 2023, most tenants or owners living in the basement units watched water spewing through their kitchen sink and washing machine to overflow into the unit for approximately 1.5 hours. The water flowed from the kitchen drain onto the kitchen counter, into the lower kitchen cabinets, under the ceramic kitchen tiles, and under parts of the living room and hallway wood floors, as well as from the washing machine down the wood hallways and into the bedrooms. An owner got a damage assessment conducted by Sinisco **Exhibit R-9** confirming the damage sustained by unit 1-2140 as a direct result of the street flooding.
- L. A member was flooded by around 80 cm of water, resulting in material losses such as appliances, furniture, clothing, shoes, valuable documents, food and the loss of a car, worth around 65,000 dollars. They were asked to leave their house to start the work quickly, and it took them two weeks to clean up. Two weeks to clean up, after which we became ill from the mold we were breathing in. Mold we breathed in on a daily basis. This incident affected the daily lives of his wife, his children and himself, in addition to the material losses. They had to be evacuated to a relative's home for a

month and a half. After that, they had to rent a house twice via Airbnb. His son Valentino, aged 11, had to be transferred to school due to the change of accommodation and his other son, 21 months old, has been enrolled in a day-care center near his other brother's school.

M. While the city's immediate response was "no city in the world could have handled this volume of water", the city of Lachine is well aware their system cannot support this demand of water, see **Exhibit R-10 and quotes:**

a. "Highlighted the need to install a separate sewer system to serve the area (the current system is of the combined sewer type). Implementing this network represents a technical and financial challenge. It requires authorizations from a number of authorities, most notably Parks Canada."

b. Currently under construction immediately to the east of the Lachine-Est sector, it is designed to reduce overflows to the Lachine Canal during heavy rains. During such rains, the Saint-Pierre collector, which carries water to the treatment plant, sometimes reaches its full capacity. In such cases, a structure is built to divert the excess water, a mixture of runoff and wastewater, into the Lachine Canal. The commissioning of the Rockfield basin, scheduled for 2020, will reduce the frequency of these overflows from 3 to 5 per year, to just one every 5 years, by temporarily storing wastewater during very heavy rainfalls. However, this infrastructure is not designed to accommodate additional water from the Lachine-Est sector. The final phase of this project includes work to enable the eventual connection of a new stormwater network, which is a prerequisite for real estate development in Lachine-Est.

The city is failing in its duty to appropriately and adequately update and maintain the infrastructure served by Victoria Street. The Montreal Interactive map of vulnerability to climate change in **Exhibit R-14** shows that since 2015, the situation was known.

N. Some owners were relying on their property as a retirement plan and they are left with almost nothing due to the loss in value right now of their property. **See Exhibit R-12** for additional owner testimonies.

O. Emergency teams only started draining the units around 11pm-12am that same day. When owners entered their units the next day, they saw all their belongings were ruined and

out of place; everything coated in a sludge. Some had their fridge facing up on the kitchen floor, and their TV underneath their console. Most of them were unable to save any furniture, appliances or electronics since they had all been damaged from the 4 feet of turbulent water that had accumulated in our home.

P. Lesley documented the flooding and has files & pictures, as **Exhibit 11 A**. Those documents show damage to the building, car loss of my tenant.

Q. She on behalf of other class members seeks an Order of this Honourable Court, that the city and borough be ordered to complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.

8. The facts giving rise to the personal claim of Mathieu Guilbault are, in addition to those in sub- paragraphs 6A to 6L, as follows:

A. Mathieu Guilbault, software designer, owns property in the affected area which

- was flooded on July 13th, 2023. He lost personal belongings in his locker to an amount around 500\$. Moreover, it increases his anxiety regarding the chance of being flooded again when it rains.
- B. Mathieu confirms that at least 12 households lost all their furniture and personal belongings because there was approximately 3 feet of black water.
 - C. Mathieu confirms that at least 12 households have been delocalized.
 - D. Mathieu confirms that at least 30 cars were flooded and declared total loss.
 - E. Mathieu confirms that approximately 84 households lost personal belongings in the lockers located in the basement. Photos, memories, sport equipment, outdoor equipment, construction equipment and other stuff. Value is approximately 2000\$ per household but can reach up to 70,000\$ for some members.
 - F. Mathieu has experienced material losses due to flooding events.
 - G. Mathieu will experience monetary losses due to flooding events. There is 25,000\$ insurance deductible payment for the condominium syndicate.
 - H. The flooding caused prejudice to Mathieu Guilbault's property due to the fact it is in the flooding area and it has an impact on the value of the property.
 - I. Mathieu and at least 34 other households experience flooding for a second time in 4 years.
 - J. Mathieu has had extreme stress due to this flooding event and is fearful every time it rains. He has difficulty sleeping because he is nervous in case it may rain.
 - K. He confirmed that the building where he lives and the other buildings surrounding have backflow preventers already installed.
 - L. He filed with at least 28 other households a Notice pursuant to the *Cities and Towns Act* within the 15-day delay and was denied coverage by the City.
 - M. At approximately 4:00 PM, it started raining. Due to the fact he is very anxious since the last flooding in 2019, Mathieu moved his car away from the Condo parking lot. At approximately 5:00 PM on July 13, 2023, Mathieu observed the rain become more intense and went on his rear balcony to see if the parking was fine. He saw approximately 1 foot of water in the parking spot. He went on Victoria Street and he saw water coming from the sewer in the middle of the street. 30 minutes later, there is at least another 1 foot of water that has been added. Around 6:00 PM, there was approximately 3 feet of black water in the basement including common area, parkings, lockers and one condo, see **Exhibit 11 B**. One firefighter truck arrived but it stalled on Victoria Street, see **Exhibit 11 B**. In the meantime, a city worker came and opened something in another sewer close to the sidewalk. Water started to be drained in Victoria Street. Another firefighter truck arrived with a water pump to pump the water out of our parking lot. Around 11:00 PM there was no more water in the parking and in the basements.
 - N. Around 12:00 AM, Sinisco, a disaster clean-up expert arrived and installed 6 dehumidifiers for 4 buildings. Deconstruction of the basement started on July 31 and finished after 3 weeks. As per August 23, decontamination has not started. Between July 13 and July 31, condo owners asked Sinisco and the insurer to start demolition without success due to the large number of claims at that time. During that time, we experienced a strong bad odor in the common area and some people became sick. They reported symptoms like feverish, nauseous, cold sweats, bad headaches and developed lesions on their legs. These symptoms persisted for approximately 3 days.

- O. Mathieu Guilbault and another co-owner Yuanhang Li received the visit of Nicolas Barkun, a city inspector in the objective to inspect our backflow valves and our rainwater drainage system. I explained to him several times that the problem is the water coming from the street. Condo owners already have backflow valves, but they were useless because the water came from the street.
- P. Mathieu Guilbault explains that before 2019, there was an empty field beside the buildings. In 2019, a parking lot with buildings will be built. During heavy rain, condo owners see a flow of water on the surface coming from the parking and goes on Victoria Street filling the sewer. Mathieu recorded the proof on videos, see **Exhibit 11 B**.
- Q. He, on behalf of other class members, seeks an Order of this Honourable Court, that the city and borough complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.

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

- A. Stéphane Groulx has experienced flooding in his condo for the second time in 4 years (2019 + 2023);
- B. On October 1st, 2019 around 6:00 PM, a total of 1 foot of water accumulated in the condo. In 2023, about 3 feet of water accumulated; See **Exhibit R-11 D** for pictures
- C. Both floods resulted in total loss. As a landlord, he lost all the appliances twice, and had to replace them. Although the insurance covered the replacement, the whole process was complicated;
- D. He was renting the condo, and lost his tenants because they did not want to relive the relocation again as they did in 2019;
- E. In 2019, he had to deal with his tenants being relocated for 8 months;
- F. He has experienced monetary losses due to flooding events, mainly because of the loss of revenue from the rent. Insurance paid a part, but the limit was quickly reached. It was a 6 to 8 months process for each flood.
- G. Having to deal with a second flood in 4 years has brought a lot of stress on himself, his wife and his kids.
- H. The value of the condo is expected to be around 10-20% less than market price for at least the next 3-5 years. He is a real estate broker and it is his evaluation of the market. Moreover, the other condo owners report the same conclusion.
- I. Renting the unit after 2 floods will be more difficult and is expected to make the rental price significantly lower.
- J. He lost 40 hours of work during those 2 floods in order to deal with the consequences; for which he claims 25\$/hour for a total of 1,000\$
- K. On July 13th 2023 at around 5PM, he received a call from his tenants to advise him that there was a flood happening again. He then came by right away to observe the situation and give support. His experience from the flood in 2019 made him realize quickly the exact same consequences were going to happen. He observed dirty water, not necessarily a strong odor but certainly a smell;
- L. On July 24th, his wife (also owner of the condo) filed a notice pursuant to the *Cities and Towns Act* within the delay, and still awaiting a response;

M. He, on behalf of other class members, seeks an Order of this Honourable Court, that the city and borough complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.

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

- A. Olivia Palamaro, Massage Therapist, owns property in the affected area which was flooded on July 13th, 2023.
- B. Olivia bought and moved into her condo in February 2022. The previous owner was living there for 4 years prior and never declared any water damages, but had mentioned that there was flooding on the buildings across from the unit. If Olivia had known this flooding would be an issue, she would have made sure to get a more fitting flooding insurance plan.
- C. Olivia confirms that her condo unit, 2 storage rooms, and outdoor parking were all on the ground floor and therefore all drastically affected by the water damage.
- D. Olivia confirms that her condo had experienced a loss of several pieces of furniture, appliances, jewelry, electronics, and personal memorabilia that cost approximately \$30,000.
- E. Olivia confirms that her car was a total loss as it was completely infiltrated by the water parked in her usual outdoor parking spot. She had just finished paying off the financing for her car, and was forced to purchase another car within a short time frame due to her insurance only providing a rental for merely 2 weeks.
- F. Olivia had to purchase a new vehicle during an economic recession when interest rates on vehicles were much higher than usual. This new car was 20,000\$.
- G. Olivia had done a lot of renovations in the bathroom, particularly the wall & floor tiling, electrical work, along with adding storage components which all cost upwards of \$3,000.
- H. Olivia had all of her all-season clothing, winter sports equipment, a high-end road bicycle, her tools, along with many other personal items which were all completely damaged from the flood and had to be thrown away. The value of these cost upwards of 1,500\$.
- I. On July 13th 2023, at approximately 4:00 PM, it started raining. At approximately 5:00 PM Olivia observed the rain become more intense and had left her work which is located down the street to check on her balcony furniture. When she walked into her condo, she had noticed that the sinks were filling up with dark brown water with a pungent sewage smell and instantly scurried to try to stop the water by blocking the drains. One hour later, water started coming in through the patio door and main door in which she realized that Victoria street had about 2 feet of water and cars were flooded and couldn't come through. Olivia went outside to assess the situation, try to help her parents get to her condo and saw that more than half of her car was immersed in water parked in her usual spot. This was when she witnessed several other tenants in basement units crying, screaming and running to salvage anything in their homes. Some tenants had small children and pets in their units and were just getting home, causing a very emotional scene. There were even people trying to break into their own units because of the cries from their pets and they were scared that they would drown.
- J. Between 5:00 PM and 6:00 PM Olivia, her family and other tenants in the building were frantically trying to salvage any furniture and personal items they could while trying to manoeuver in 3 feet of sewage dark brown water all around them. This was very

traumatizing for Olivia to experience as it was her first home and she had put a lot of emotion into personalizing it and making it her safe place which clearly was no longer the case.

- K. Around 6:00 PM, there was approximately 3 feet of black water in the basement including common area, parking, lockers and one condo, see **Exhibit 11**. One firefighter truck arrived but it stalled on Victoria Street, see **Exhibit R-11 C**.
- L. In the meantime, a city worker came and opened something in another sewer close to the sidewalk. Water started to be drained in Victoria Street. Another firefighter truck arrived with a water pump to pump the water out of our parking lot. Around 11:00 PM there was no more water in the car park and in the basements.
- M. Around 12:00 AM, Sinisco, a disaster clean-up expert arrived and installed 6 dehumidifiers for 4 buildings. Deconstruction of the basement started on July 31 and finished after 3 weeks. As per August 23, decontamination has not started. Between July 13 and July 31, we asked Sinisco and the insurer started demolition without success due to the large number of claims at that time. During that time, we experienced a strong bad odor in the common area and some people became sick. They reported symptoms like feverish, nauseous, cold sweats, bad headaches and developed lesions on their legs. These symptoms persisted for approximately 3 days.
- N. In addition to claimed damages of material, moral, psychological and financial stress, Olivia would like this situation to never happen again so that she can live in peace and once ready to sell her condo she can ensure that this won't be an issue for next buyers so she can sell at a profit and not a loss. Olivia had invested over \$30,000 in materials and renovations for her home and was not fully covered for these investments by her insurance. Olivia loved her home before this situation occurred and would like to reside there for longer. She only lived there for a little over a year and is now living at her boyfriend's apartment in the interim of the condo being renovated.
- O. Olivia is looking to take an active role in this lawsuit so that she can ensure the peace, safety and financial stability for herself and other condo owners and tenants residing at Jardins Victoria.
- P. She on behalf of other class members seeks an Order of this Honourable Court, that the city and borough be ordered to complete all necessary infrastructure upgrades within six months of the Filing of the present Collective Action.

The sub-class of owners in particular have faced, in addition to the facts alleged in points 6-9. 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.

The sub-class of tenants in particular have faced, in addition to the facts alleged in 6-9, loss of enjoyment of property and health issues.

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 insurance or condo fees to subsidize those flooded.

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

11. 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 Mathieu Guilbault, signed by approximately 30 City residents filed by Applicant Mathieu Guilbault is produced herewith as **Exhibit R-12**.
- B. A collection of pictures and videos taken during repeated flooding events in Lachine is produced herewith as **Exhibit R-11**.
- C. In 2019, members also encountered a flooding event in this specified zone and claims were also submitted at that time **Exhibit R-13**.
- D. Representatives and members allege the liability of the borough, Mayor Vodanovic and the city for improper zoning. Mayor Vodanovic has been in office since 2013. She has been mayor since 2017 as indicated in **Exhibit R-15 (3 pages)**. The condominium buildings located at 2260 rue Victoria should never have been permitted as their location flooding damage was inevitable as they are in low point where a collector would be filled at overcapacity. As mentioned above (Exhibit R-16), the network has now reached its maximum capacity and needs to be replaced by wastewater infrastructure, including an overflow structure to discharge rainwater. The borough and mayores continue to permit new projects and fail to correct this network. See **Exhibit R-16**.
- E. The Defendant Mayoress is vicariously liable for all flooding damage directly or indirectly resulting from, related to or exacerbated by any and all omissions concerning inspection, maintenance, repair or replacement of secondary water infrastructures (including conduits of less than 1500mm and all infrastructure attached thereto) in the Borough, as indicated at paragraph 6 of the Affidavit of Defendant City's expert Osseyrane, attached herewith as **Exhibit R-17**. More specifically, the defendant Mayoress had control, both jurisdictional and budgetary, over the secondary infrastructure as the Defendant Mayoress, for all intents and purposes, had control of the borough's decision-making as concerns the secondary infrastructure and its budget. As such, the damage caused by the autonomous acts of the secondary infrastructure were under the control of the Defendant Mayoress, for which reason the Defendant Mayoress is to be presumed strictly liable.

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

12. 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 Applicants are neighbors of the primary and secondary infrastructure and if that is the case whether Defendants are liable for neighborhood annoyance.
- E. Whether the flooding and resulting pollution constitute neighborhood 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 Lachine is a “thing” under the custody of the City of Montreal and Mayor of Lachine under arts 1457 and 1465 CCQ, and whether the Defendants are consequently strictly liable for the damage caused by autonomous acts of the primary and secondary 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 system faulty and/or negligent zoning and a failure, to properly maintain it;
- J. Whether Defendants were at fault for failing to properly, maintain/or upgrade the water infrastructure.

K. Weather as concerns actions or omission of primary and secondary infrastructure 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 bounded west to east by 32th ave. to 6th ave. and bounded south to north by Notre-Dame Street to St. Antoine street, from October 1, 2019 until the publication of notices.

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

13. 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 or indirectly affected, at least 130, 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 subclass 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.

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

14. The conclusions sought by the Applicant are:

DECLARE that 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, an additional \$30,000 for the second instance and an additional \$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))

15. The Applicant Mathieu Guilbault is in a position to represent the members adequately, for the following reasons:

- A. He lives in a neighborhood 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 Lachine.
- 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 neighborhood identified under the description of class presented above;
- C. He went door to door discussing in great detail the flooding with about 125 class members;

- D. He gathered the 77 names, addresses and phone numbers of persons who have been affected by flooding, see **Exhibit R-12**, 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;
- G. He 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-11B**.
- H. He has no conflict of interest with the class members.

16. The Applicant Lesley Kotnjek is in a position to represent the members of the class who are involuntary insurers adequately, for the following reasons:

- A. She is an owner of her unit since 2022 in the borough of Lachine;
- B. Her tenants have been directly affected by the flooding as they had a total loss on their car and also had some belongings in the locker;.
- 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 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 and took pictures during the July 13th 2023 flooding event, see **Exhibits R-11A**;
- F. She has no conflict of interest with the other class members

17. The Applicant Steph Groulx is in a position to represent the members of the class who are involuntary insurers adequately, for the following reasons:

- A. He is an owner of her unit since 2012 in the borough of Lachine;
- B. His tenants have been directly affected on October 1 2019 and on July 13th, 2023 by the flooding as they needed to be relocated in another home for over 8 months

and today he actually lost his tenants.

- C. He has acquainted himself with the concerns of the class members and has been vocal in his attempts to bring the situation to the attention of the municipality through meetings;
- D. He 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. He has witnessed the impact of the flooding on other class members, including the anxiety and stress and fear and took pictures during the July 13th 2023 flooding event, see **Exhibits R-11D**;
- F. He has no conflict of interest with the other class members

18. The Applicant Olivia Palamaro is in a position to represent the members adequately, for the following reasons:

- A. She is an owner of her unit since 2022 in the borough of Lachine;
- B. She lives in a neighborhood 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 Lachine.
- C. She 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 neighborhood identified under the description of class presented above;
- D. 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-11C**.
- E. She has no conflict of interest with the class members.

19. 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 Lachine 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 Mathieu Guilbault and, Lesley Kotnjek and, Steph Groulx and, Olivia Palaramo the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class of natural persons, namely:

All persons, 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 bounded west to east by 32th ave. to 6th ave. and bounded south to north by Notre-Dame Street to St. Antoine street from October 1, 2019 until the publication of notices;

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 Applicants are neighbors of the primary or secondary infrastructure and if that is the case whether defendants are liable for neighborhood annoyance.
- e. Whether the flooding and resulting pollution constitute neighborhood 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;

Whether Defendants:

- A. committed willful errors, acts and omissions with regard to flood damage protection such that their liability is *solidary* or *in solidum*;
- B. 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;
- C. Whether the drainage system of Lachine and Ville-Marie is a “thing” under the custody of the City of Montreal and Mayor of Lachine 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;
- D. *Whether* the Applicant and each member of the class *has a right* to claim damages, *including* moral, exemplary and Charter damages, from the Defendants;
- E. 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;
- F. Whether Defendants were at fault for failing to properly maintain/or upgrade the water infrastructure.
- G. Whether as concerns actions and omissions for primary and secondary infrastructure the Defendant Mayor is vicariously liable.

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 bounded west to east by 32th ave. to 6th ave. and bounded south to north by Notre-Dame Street to St. Antoine street as shown below in **Exhibit R-1**, from October 1, 2019 until publication of notices.

MONTREAL, this 3rd day of January, 2024

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 Application. The answer must be notified to Lorax Litigation.

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 Application Applicants allege the following Exhibits, *(on USB key)*

- Exhibit R-1:** The Affected Area
- Exhibit R-2:** Map of zone detailed
- Exhibit R-3:** Population estimate
- Exhibit R-4:** Letters of Notice
 - R-4A:** Lesley Kotnjek notice
 - R-4B:** Olivia Palaramo notice
 - R-4C:** Mathieu Guilbault notice
 - R-4D:** Stephane Groulx notice
- Exhibit R-5:** Media coverage
- Exhibit R-6:** Profile and Plan sewer collector
- Exhibit R-7:** Sewer Development Plan
- Exhibit R-8:** Guide Pluvial
- Exhibit R-9:** Beneva report
- Exhibit R-10:** Volume capacity
- Exhibit R-11:** Photos and Videos
- Exhibit R-12:** Claims to the city 2023
- Exhibit R-13:** Claims to the city 2019
- Exhibit R-14:** Interactive Map of vulnerability to climate change
- Exhibit R-15:** Maja Vodanovic, Wikipedia
- Exhibit R-16:** OCPM Document proving statement in 2018
- Exhibit R-17:** Affidavit of defendant city's expert Osseyrane
- Exhibit R-18:** 2019 Notice letter of Stephane Groulx
- Exhibit R-19A :** Évaluation hydraulique du collecteur Saint-Pierre
- Exhibit R-19B:** Map of Lachine problem areas

Montreal, Quebec, this 3rd day of January, 2024.

Charles O'Brien
Lorax Litigation for Applicants