

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(“Class Action”)
SUPERIOR COURT

No:500-06-001194-220

Dwight Faithful

Applicant

-VS-

Montreal Airport Authority,

AND

NAV Canada,

AND

Air Canada,

Respondents

**RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVE**

(Articles 906, 976, 1457, 1465 C.C.Q.)
(*Radiation Emitting Devices Act*)

APPLICANT RESPECTFULLY SUBMITS:

JURISDICTION AND VENUE:

1. The Applicant requests that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
 - A. The Montreal-Trudeau International Airport is located on the Island of Montreal in the Judicial district of Montreal;
 - B. The pollution complained of that caused the harm suffered by Applicant and the other class members was carried out in the Province of Québec, and the vast majority of the class members reside in [...] Greater Montreal;

- C. There exists no better suited forum or district to render justice in the present dispute.

THE PARTIES:

2. The Applicant, Dwight Faithful, is a resident of Dorval. He lives less than 2km from the Montreal-Trudeau International Airport ("The Airport"). He wishes to represent the following class:

All Quebec residents, including owners, tenants, and subtenants of immovable property, who, at any time after July [...]1, [...]2021 and until the publication of Notices, suffered airplane noise pollution between the hours of 12PM for takeoffs and 1AM for landings and 7AM, who were living both under the flight path of airplanes departing from or arriving at Montreal-Trudeau International Airport namely

Laval - Everything East of highway 13, estimated pop. 400,000

All of Ile Perrot - estimated pop. 10,553

Ile Bizard

Bordered by an area South of rue Cherrie to the water, between all of Rue Joly Eastward to Jacques Bizard Blvd, estimated pop. 400

All of Boucherville - south shore, estimated population 40,753

Montreal

All of Point-Saint-Charles

All of Verdun

All of Cote Saint Paul Estimated Pop. 168,868

All of Ville Emard

All of Lasalle

All of Baie d'Urfe

All of Beaconsfield

Kirkland Estimated Pop. 117,940

All of Pointe Claire

All of Dorval

All of Lachine

Pierrefonds-Roxboro

From highway 13 West to Blvd St. Johns Estimated Pop. 35,000

East End Montreal to highway 25 Estimated Pop. 174,780

25West to 117/A15 and North of the 40 to the shoreline
Estimated Pop. 315,579

All of Villeray Estimated Pop. 143,853

All of Parc Extension Estimated Pop. 33,800

All of Mt. Royal Estimated Pop. 21,000

For a total population estimate of 1,090,090 people affected by excessive nighttime airplane noise.

The method of testing, methodology, equipment, flight paths and areas affected are shown in **Exhibit R-16A Data Collection and Evaluation** with **Exhibit R-16B Noise Affected Area Montreal and Surroundings** showing an enlargement of the map defining the areas listed above.

The estimates of noise in respect to airplane altitude and flight path were determined using the **Aircraft Overflight Study Exhibit R-15**.

The flight path [...] detailed in Exhibit R-8 Appendix C.

3. Aéroports de Montréal (ADM) is a private, not-for-profit corporation. It controls and authorizes flights to and from The Airport. NAV Canada is “a privately run, not-for-profit corporation that owns and operates Canada's civil air navigation system”.
4. Air Canada is a major airline operating out of The Airport. It operates a high percentage of flights to and from The Airport: far more than any other airline. Flights in high volume began after the Covid restrictions ended on July 1, 2021 (Exhibit R-17), the commencement date of this collective action.

THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT (575 (2)):

GENERAL

5. The class members live under the flight path of flights arriving at and departing from the Montreal-Trudeau International Airport.
6. The area affected is residential and ought to be quiet and peaceful.
7. Airplanes, especially larger, heavier jets, can emit sounds roughly between 120 and 150 decibels while taking-off and while landing.¹ When this sound reaches

homes near The Airport, it often still reaches or even exceeds 80 db(A).² For perspective, 80 db(A) is roughly the volume of an *alarm clock*.³

8. The World Health Organization strongly recommends reducing airplane noise to below 45 decibels during the day and to below 40 decibels during the night.⁴
9. Class members are consequently seriously disturbed by airplane noise, in particular during the night.
10. The Defendants control flight departure and arrival times and routinely schedule flights to depart and land during the night despite the disturbance this causes in the neighbourhood.
11. In doing so, ADM, in conjunction with the other Defendants, frequently breaches its own noise abatement policies and relevant Federal regulations.
12. In addition to regular daytime flights, the Defendants, who control flight departure and arrival times, routinely schedule airplanes, including large jets, to depart and arrive between 11pm and 1am and between 6am and 7am. They even, although less frequently, permit flights between 1am and 6am.
13. While the number of flights in the night varies, as an example, there were 18 arrivals and 13 departures scheduled between 11pm and 7am on Wednesday, July 20th to Thursday, July 21st, 2022.⁵ While a few of these flights may have been smaller planes, even 15 alarm clocks during the night would be an intolerable disturbance.⁶
14. Class members are naturally disturbed and should not be forced to tolerate noise as loud as an alarm clock during the night.
15. Defendants, in particular Defendant Air Canada, has been fined repeatedly for operating late flights.

¹ See <https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>.

² See the table of data included as Appendix A.

³ See <https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>, *supra* note 2.

⁴ See Exhibit R-3, Environmental Noise Guidelines for the European Region, World Health Organization, 2018, at 61ff.

⁵ See the departure and arrival boards of The Airport.

⁶ See below for greater precision regarding numbers of flights. It should be noted that the defendants will have the exact details of all departures and arrivals and the types of aircraft used.

HISTORY OF PRIOR ACTIONS

16. ADM and NAV Canada were named Defendants in another application for authorization filed in 2016 by Les Pollués de Montreal-Trudeau (LPDMT).⁷ That action was authorized by Justice Chantal Tremblay in April 2018.⁸ A class action has since been instituted by LPDMT on behalf of the following class:
 - A. « Toutes les personnes physiques, âgées de 18 ans et plus au 19 décembre 2014, qui ont résidé, entre le 19 décembre 2014 et le 19 décembre 2016, et 18 mai 2020 dans un immeuble situé dans l'une des zones décrites ci-dessous et délimitées par les adresses comprises au tableau révisé communiqué comme pièce R-6... »
17. That action also seeks to hold ADM and Nav Canada accountable for the noise pollution they have inflicted on the surrounding neighbourhood and in particular residents living under the flight path.
18. It was authorized to proceed against Nav Canada, the Attorney General of Canada, and ADM under articles 1457 CCQ and against ADM and the Attorney General of Canada under article 976 CCQ.⁹
19. This action differs as:
 - A. The classes contain no overlap since they cover different time periods;
 - B. This action argues for liability under article 1465 CCQ in addition to articles 1457 and 976 CCQ.
 - C. The action argues liability pursuant to the prohibitions of the *Radiation Emitting Devices Act* R-1.
 - D. [...]
 - E. The present proceedings are distinguished by the fact that the defendants failed to properly respond to the new environment created for air travel once the Covid restrictions were lifted. Their failure to do so constitutes a fault, led to unreasonable and unacceptable neighbourhood annoyance, and breached the *Radiation Emitting Devices Act*.

⁷ See Exhibit R-6 the Application for Authorization.

⁸ See Exhibit R-7, the Judgement Authorizing the Class Action as corrected: Pollués de Montréal-Trudeau c. Aéroports de Montréal, 2018 QCCS 140.

⁹ *Ibid.* “CCQ” is the Civil Code of Quebec.

- F. As concerns Defendant Air Canada, following COVID the airline was understaffed and that staff insufficiently trained and, furthermore, there were unusual and exceptional problems with baggage handling and lack of properly trained baggage handling personnel, all of which led to more takeoffs and landings outside of the regulated hours.
- G. Defendants purport to monitor take-off noise after hours at Trudeau Airport. However, on their website it is clear that two of the measuring stations on takeoff runways were not operational from at least July 4, 2024, until August 5 as appears on **Exhibit R-19A**. Picture of non operational monitoring station NMT-205 **Exhibit R-19B**.
20. It should be noted that LPDMT also brought a class action for air quality pollution, which was not authorized,¹⁰ and an action (not a class action) in damages and injunctive relief which was dismissed on a preliminary motion for dismissal.¹¹

ARTICLE 976 CCQ

21. Class members are entitled to have annoyances beyond the limits of tolerance curtailed. They are also entitled to damages for the intolerable annoyance they have suffered.
22. Class members have been and continue to be affected by noise which is unreasonable and intolerable in a residential setting. It constitutes a nuisance for which the Defendants are liable under article 976 CCQ:
- A. Article 976 CCQ creates a regime of strict liability independent of both civil liability and abuse of rights;¹²
- B. Regardless of fault this regime requires only proof that neighbours suffered or suffer “abnormal annoyances that were beyond the limit of tolerance;”¹³

¹⁰ See *Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM)*, 2021 QCCS 367, 2022 QCCA 1646.

¹¹ See *Exhibit R-9 : Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM)*, 2020 QCCS 2432.

¹² See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at paras 72-75 [*Ciment du Saint-Laurent*].

1. The noise pollution is particularly egregious during sleeping hours: after 12pm for takeoffs and 1 am for landings and before 7am, and, during these hours, certainly surpasses the limits of tolerance.
2. Further aggravating this annoyance is the fact that airplane noise is a particularly troubling type of noise pollution with serious effects, as explained below.¹⁴
3. [...]

Airplane Noise

23. Health Canada recognizes aircraft noise as “one of the most disturbing sources of noise in our environment.”¹⁵
24. The World Health Organization strongly recommends reducing airplane noise to below 45 decibels and noise during the night to below 40 decibels.¹⁶
25. Airplane noise is typically tied to weight with heavier airplanes creating more noise. For this reason, noise abatement policies usually focus on aircraft weighing more than 34,000kg (U.S. regulations use 75,000lb which is ~34,000kg).¹⁷
26. Class members consequently complain only of the larger airplanes and make no complaint about airplanes weighing less than 34,000kg.
27. While loudness or amplitude of sound is measured in decibels, certain noises are perceived as louder than others by humans usually because of their frequencies. The db(A) scale is an adjusted decibel scale which accounts for the varied perceptions of different sounds.¹⁸ Db(A) is consequently the most useful measure

¹³ Ibid at para 95.

¹⁴ See the sections below on airplane noise and on health effects, see also <https://www.flylakeland.com/aircraft-noise>.

¹⁵ See health canada’s website at <https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/health-effects-airplanes-aircraft-noise.html>.

¹⁶ See Exhibit R-3: Environmental Noise Guidelines for the European Region, World Health Organization, 2018, at 61ff.

¹⁷ See H Smith, Innovation in supersonic passenger air travel. See also Exhibit R-5 U.S. Department of Transport - Noise levels for U.S. certified and foreign aircraft.

¹⁸ See Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, Chapter 5, “Noise and Children's Development”, at 158 for a more detailed explanation of db(A):

“Noise is the term for sounds that we do not want to hear. Sounds are alternating compressions and expansions (waves) transmitted through the air, water, or solids. Two characteristics of

of sounds, so it is used here exclusively.

Health Effects of Airplane Noise

28. Noise pollution can cause serious health harm:
- A. “They’ve shown that noise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease; type 2 diabetes; sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight.”¹⁹
 - B. The Environmental Noise Guidelines for the European Region by the World Health Organization, 2018, also recommend limiting airplane noise, particularly during the night, to protect human health.²⁰
29. Sleep disturbance on its own is a health concern as sleep is vital to human health.²¹
30. Children are especially sensitive according to the attached chapter by Colleen F. Moore which details the health effects noise can have on children.²²

sound waves are important for understanding this chapter: frequency and amplitude.¹ The amplitude or intensity of a sound is measured in decibels, and influences how loud sound seems when we hear it. There are different decibel scales, and the one that is most important in this chapter is dbA. The dbA scale weights the different frequencies of the sound in a way that takes the average sensitivity of human hearing into account. The distinction between amplitude and loudness is important. Amplitude in decibels is the scientist's measure of the physical intensity of the sound, but loudness is our perception of it. Loudness does not increase linearly with sound amplitude. A very important aspect of decibel scales is that they are log (base 10) scales of sound amplitude. In a log scale, each increase of one unit represents a multiplication of the previous unit by 10. In the db scale an increase of 3 units reflects a doubling of the amplitude of the sound, or the amount of energy in the sound.”

¹⁹ See STTEPHANIE DUTCHEN, “THE EFFECTS OF NOISE ON HEALTH, HARVARD MEDICINE MAGAZINE, ALSO INCLUDED AS EXHIBIT R-10.

²⁰ See See Environmental Noise Guidelines for the European Region, World Health Organization, 2018, for details.

²¹ See [sleepfoundation.org](https://www.sleepfoundation.org), which is also referenced in the Health Canada recommendations at <https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>.

See also Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, 2003, Chapter 5, “Noise and Children's Development” [Moore].

²² Moore, *ibid*.

31. Children also need proper sleep and more sleep than adults for their development,²³ so being sensitive to noise, they are more effected than adults by the airplane traffic.

Legislative Framework and Regulations surrounding The Airport

32. The Airport falls primarily into Federal jurisdiction. Authority to regulate it thus stems from the *Aeronautics Act* which empowers the *Canadian Aviation Regulations*.
33. The *Canadian Aviation Regulations* say:

Noise Operating Criteria

602.105 No person shall operate an aircraft at or in the vicinity of an aerodrome except in accordance with the applicable noise abatement procedures and noise control requirements specified by the Minister in the *Canada Air Pilot* or *Canada Flight Supplement*, including the procedures and requirements relating to

- (a) preferential runways;
- (b) minimum noise routes;
- (c) hours when aircraft operations are prohibited or restricted;
- (d) arrival procedures;
- (e) departure procedures;
- (f) duration of flights;
- (g) the prohibition or restriction of training flights;
- (h) VFR or visual approaches;
- (i) simulated approach procedures; and
- (j) the minimum altitude for the operation of aircraft in the vicinity of the aerodrome.²⁴

Noise-restricted Runways

- **602.106 (1)** Subject to subsection (2), no person shall operate a subsonic turbo-jet aeroplane that has a maximum certificated take-off weight of more than 34 000 kg (74,956 pounds) on take-off at a noise-restricted runway set out in column II of an item of the table to this section at an aerodrome set out in column I of that item, unless there is on board

²³ See the National Sleep Foundation's updated sleep duration recommendations: final report at <https://pubmed.ncbi.nlm.nih.gov/29073398/>.

²⁴ See the *Canadian Aviation Regulations*, SOR/96-433.

- **(a)** a certificate of noise compliance issued in respect of the aeroplane under section 507.20; or
 - **(b)** where the aeroplane is not a Canadian aircraft, a foreign certificate of noise compliance issued by the state of registry that has been validated by the Minister under section 507.23.
 - **(c)** [Repealed, SOR/2020-151, s. 14]
- **(2)** Subsection (1) does not apply
 - **(a)** to the extent that it is inconsistent with any obligation assumed by Canada in respect of a foreign state in a treaty, convention or agreement;
 - **(b)** where the pilot-in-command of an aircraft has declared an emergency; or
 - **(c)** where an aircraft is operated on
 - **(i)** an air evacuation operation,
 - **(ii)** any other emergency air operation, or
 - **(iii)** a departure from an aerodrome at which it was required to land because of an emergency.²⁵

34. They therefore specify that, on noise restricted runways, aircraft weighing more than 34,000kg must be certified. All runways at The Airport are noise restricted.²⁶
35. The *Canadian Aviation Regulations* empower the Canada Air Pilot and Canada Flight Supplement to delineate more specific noise abatement procedures.
36. ADM lists the following noise abatement policies on its website.²⁷ These are noise abatement policies attached specifically to The Airport, and they include restrictions on take-off and landing directions and on hours:
- A. “For jets weighing more than 45,000 kilograms, normal hours are between 7 a.m. and midnight for take offs and between 7 a.m. and 1 a.m. for landings.”
 - B. “ADM grants exceptions to certain aircraft for departures before 7 a.m. and for late arrivals. However, only the quietest aircraft are eligible.”²⁸
 - C. There are also exceptions for medical emergencies.

²⁵ All runways at The Airport are noise restricted. See *ibid* at article 602.106.

²⁶ *Ibid.*

²⁷ See the Defendant ADM’s website at <https://www.admtl.com/en/adm/communities/soundscape/noise-abatement>: a PDF of which is attached as Exhibit R-2.

²⁸ *Ibid.*

37. The noise abatement policies exist to help create a reasonable co-existence between The Airport and its neighbours. They set out standards including a restriction on operating hours: breaching these standards should be considered a strong indication that the Defendants have departed from the rules of conduct incumbent on them and are acting in a manner that is unacceptable.
- 40.A. In June of 2024, Defendants sought to have the restrictions on take off and landing hours reduced by 2 hours such that planes may depart between 6am and 1am, with only a five hour restriction, and arrive between 6am and 1am, as appears from **Exhibits R-18A** and **R-18B** and video **Exhibit R-20**. As indicated in those exhibits, at least 200 hundred residents signed a petition protesting against these changes as they are already greatly inconvenienced and stressed by noise and that these changes would further aggravate them. The proposed changes to the hours of operation constitute and admission by Defendants that they do not comply with current hours of operation.
38. Conversely, abatement policies do not authorize any activity. They are restrictive only and not permissive. Not having contravened these policies is not a defence to creating an unreasonable neighbourhood annoyance nor to having departed from the rules of conduct incumbent on the Defendants. While many flights, which disturb the class members, do not contravene these policies, they nonetheless still create noise pollution that is an unreasonable neighbourhood annoyance and for which the Defendants are liable.²⁹
39. By allowing flights during the night, the Defendants breach the noise abatement policies and create exactly the annoyance that these regulations exist to prevent.
40. Since noise abatement policies exist to prevent disruptions to class members and since some exceptional or emergency night-time flights are unavoidable, class members should be warned of flights that have been exceptionally authorized to breach the noise abatement policies, or, if warning is impossible, then they should be informed of the justifications for the late-night flights. The Applicant is therefore justified in suggesting that an accessible and dedicated page of ADM's website

²⁹ See *Ciment du St-Laurent*, *supra* note 12 at para 32 ff.

publish this information, including the justification for the exception, in advance of or at the latest within 24h of a night-time flight.

41. A breach of section 602.105 or 602.106 leaves the culprit liable to a maximum fine of \$5,000 for an individual or of \$25,000 for a corporation.³⁰
42. At this stage, class members do not yet have information on the administration of these fines. If they are being applied to airlines or others, as the Defendants will be able to confirm or refute, then airlines are being fined for flying late flights because of the disruptive noise this causes. If so, then those disturbed by this disruptive noise, the class members, should benefit directly from these fines.³¹
43. Class members would then be justified in asking to receive the benefit of fines administered based on contraventions of articles 602.105 and 602.106 of the *Canadian Aviation Regulations* at The Airport.

FAULTS OF THE DEFENDANTS WHICH ALSO CREATE INTOLERABLE NEIGHBOURHOOD ANNOYANCE

44. The Defendants consistently begin scheduling departures and arrivals as of 6am.
45. It is also common for there to be numerous flights between 12pm and 1am.
46. There are, consistently, several flights each night between 1am and 6am.
47. These flights are not delayed flights or exceptions but rather are scheduled during these hours and many of them run at the same time each night. Many are regular, scheduled, nightly flights.
48. These flights are not only small craft and are certainly not only “the quietest aircraft”³² but rather include full sized jets.
49. As an example, the arrivals one night, chosen only because it is recent and so the data is still recorded are included in Appendix A.³³ Note that the wind shifts during the night, so a different recording station gives the highest db(A) values for the flights after 6am. Another example chosen from December 21, 2022, **Exhibit R-21A**, shows frequency of airport activity and the amplitude of the noise in dB,

³⁰ See *Canadian Aviation Regulations, Appendix A, Schedule II, Part 6, subpart 2*.

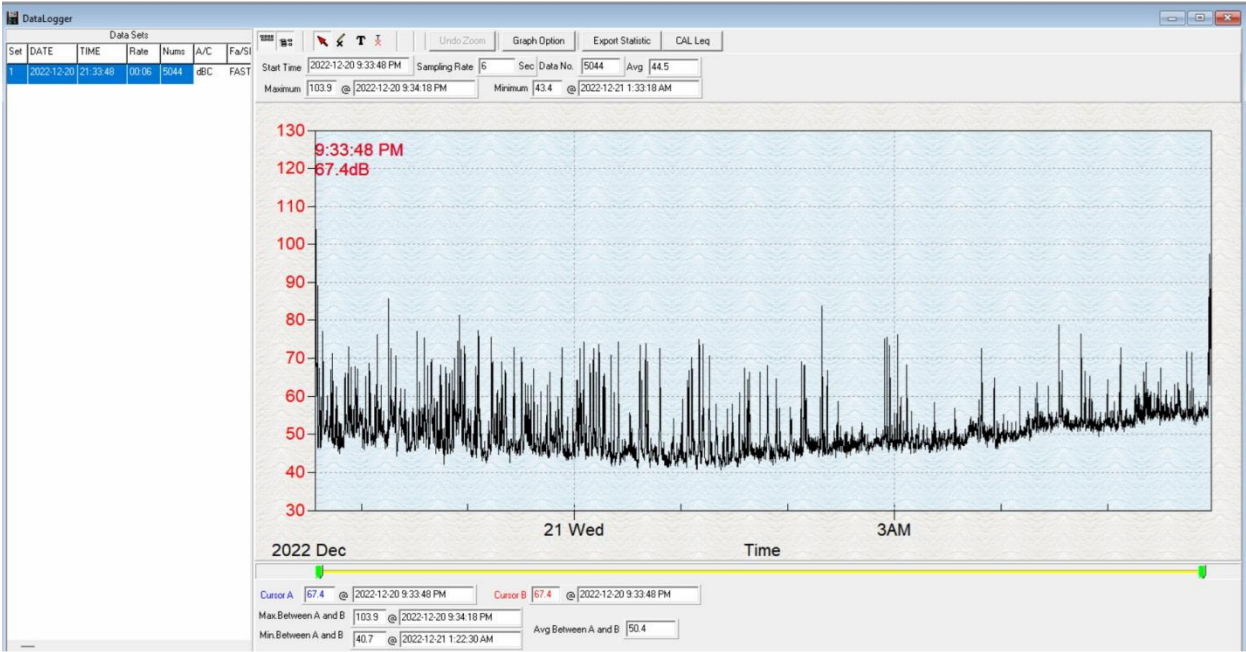
³¹ Applicants will add information relating to fines when it becomes available.

³² This a quote from the ADM website quoted previously and included as Exhibit R-2.

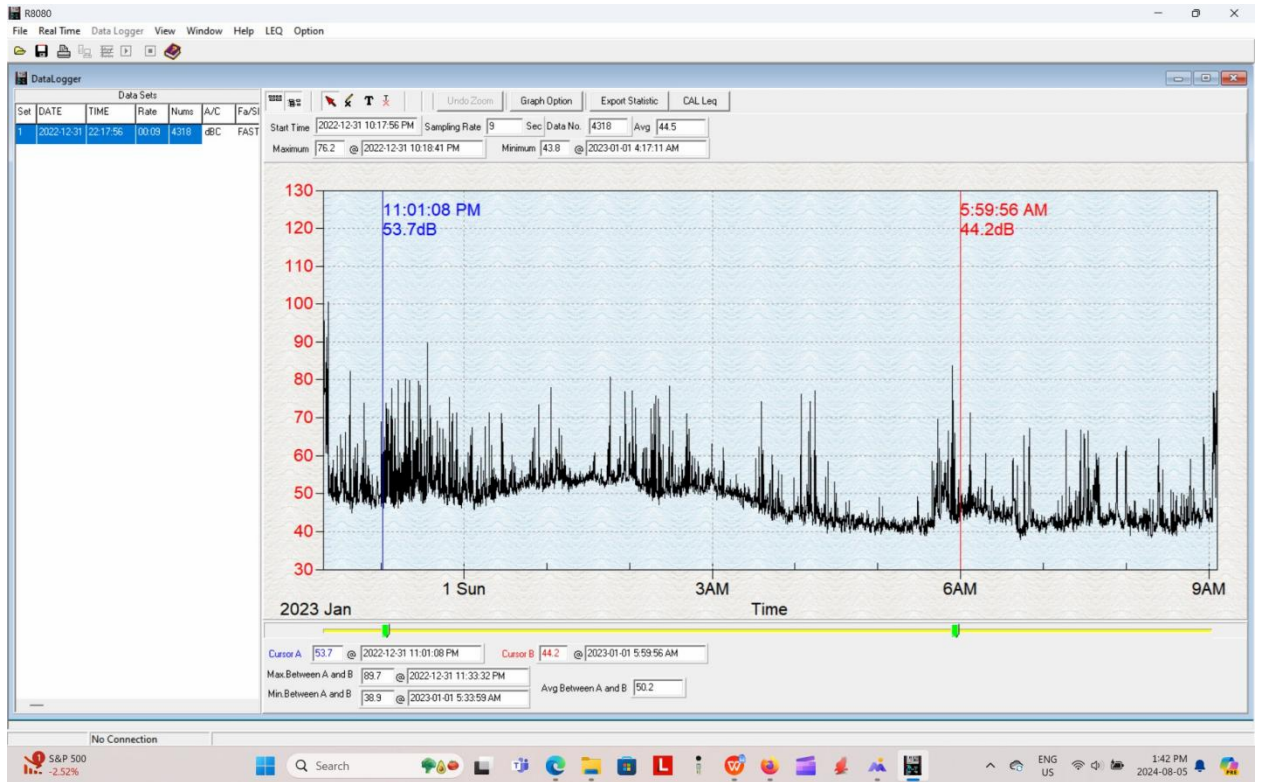
³³ Appendix A

which on this evening went throughout the night. We also show more recent data
Exhibit R-21B taken on January 1, 2023 which also shows constant noise activity.

R-21A



R-21B



50. The departures of a night chosen at random will be included as Appendix B.
51. As can be seen, flights regularly create noise pollution over 80 db(A) and often over 90 db(A). This data comes from Webtrak which is operated in conjunction with ADM.³⁴
52. The Defendants will have exact details of flight departure and arrival times during the period covered by this action, especially of scheduled flight departures and arrivals.
53. These actions run contrary to the noise abatement policies in place.
54. These actions run contrary to the recommendations of the World Health Organization.
55. These actions pollute the surrounding neighbourhood, particularly those living under the flight path, and unreasonably disturb its residents.
56. Scheduling these flights therefore constitutes a fault.

³⁴ Webtrak is available at <https://webtrak.emsbk.com/yul2>. It is also available through Defendant ADM's website. The data it uses is provided by Defendant NAV Canada. A PDF of ADM's webpage is attached as Exhibit R-4.

57. The Defendants cannot be unaware of the noise abatement policies in place. Defendant ADM has several of them listed on its website,³⁵ and Defendant NAV Canada was also included in the above-mentioned prior class action. Defendant Air Canada has been repeatedly fined, the Defendants will have precise numbers of fines, for running late flights and certainly cannot pretend it was unaware that of the policies behind those fines and that it is noise pollution that the noise abatement policies seek to prevent.
58. Despite this, the Defendants, knowing the annoyance they will create, choose to pollute the class members. They choose to run flights during the nights knowing the disruption this causes class members. It is therefore an intentional fault, for they knowingly and deliberately disrupt the sleep of class members. Even if it is not found to be intentional, these actions would constitute gross negligence.
59. Class members are therefore justified in seeking damages under article 1457 CCQ [...].
60. These actions also constitute a breach of art. 6 of the *Charter of Human Rights and Freedoms*.³⁶ The intentional nature of the above-mentioned fault justifies punitive damages under article 49 of the *Quebec Charter*.

ARTICLE 1465 CCQ

61. Sound moves in waves, and waves are deemed corporeal moveables by article 906 CCQ.
- 906 CCQ: “Waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables”
62. Articles 1457 al fine and 1465 CCQ create a regime of liability for the autonomous acts of things under one’s control:

³⁵ See Exhibit R-2.

³⁶ *Charter of Human Rights and Freedoms*, CQLR c C-12 [*Quebec Charter*].

1465. The custodian of a thing is bound to make reparation for injury resulting from the autonomous act of the thing, unless he proves that he is not at fault.

1457 Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.

63. Article 1465 CCQ creates a regime of presumed fault provided that three elements are first proved: prejudice, control and autonomous act.³⁷ These three elements can be proved for the sound waves emanating from airplanes.
- A. The harm to residents is the disturbance caused by the sound waves.
 - B. As for control, only the Defendants, and in particular the Defendant airline, has control over its planes. It therefore controls the waves of sound created by the movement of its airplanes and by their engines. They also own the airplanes and derive profit from them both of which are indicators of control.³⁸
 - C. Finally, the waves are autonomous because they are dynamic and not directly controlled by human intervention.”³⁹ They are clearly dynamic as they move rapidly through the air and other mediums. Unless, the Defendants are determined to have been directly responsible for the harm caused by the waves, then the waves are autonomous. *Baudouin* notes that there will always be a person distantly connected with the act of a thing and that this does not preclude liability.⁴⁰

³⁷ See *Institution royale pour l'avancement des sciences c. Ville de Montréal*, 2019 QCCS 929 at para 74 and see Baudouin, J.-L., P. Deslauriers et B. Moore, *La responsabilité civile*, Volume 1 - Principes généraux, 9e édition, 2020 [Baudouin] and see Vincent, Karim, *Les obligations* [vol. 1], 5e éd. (2020), Art. 1465.

³⁸ See Baudouin, *ibid* at 1-962 to 1-966, and as concerns “Theorie de risqué profit” 1-170.

³⁹ *Ibid* at 1-946.

64. If the fault is in scheduling the flights during the night, then the fault lies directly on all three Defendants. If the fault is, however, in permitting the airplanes to travel through the air and therefore in allowing the sound waves to emanate out into the neighbourhood, then the controller of the soundwaves, which are corporeal moveables, is liable for the harm caused by them.
65. Air Canada controls the soundwaves, most directly, but ADM and NAV Canada exercise significant control over the direction and time of these waves as it dictates when and where the airplanes can emit them.
66. If Defendants are not directly liable for scheduling and operating late flights, then they are liable for the harm caused by the waves, which cause harm, are deemed to be things under art. 906 CCQ, and are under their control.

BREACHES OF THE *RADIATION EMITTING DEVICES ACT* PROHIBITIONS

67. Defendants' pressure waves (aka noise) render airplanes "radiation emitting devices" as defined by *the Radiation Emitting Devices Act*, R.S.C., 1985, c. R-1;
68. By operation of the prohibition at section 4(b) (iii), radiation (noise) from 23:00 to 07:00 is prohibited unless explicitly authorized by *Regulation*. No such authorization is provided.

THE FACTS GIVING RISE TO THE PERSON CLAIMS OF THE REPRESENTATIVE

69. Dwight Faithful lives near The Airport with his two children.
70. He lives under the flight path at 400 Elmridge Street, Dorval which is within 2km of the airport.
71. He is disturbed by airplanes landing or departing from The Airport during the night.
72. These flights wake him and his children and prevent them from sleeping properly.
73. The flights are sufficiently common so as to create a disturbance which they cannot tolerate.
74. These disturbances increase his stress and that of his family.

⁴⁰ *Ibid* at 1-948.

75. In particular, his children are affected as they have the sharpened hearing of youth and the need for restful sleep that childhood demands.
76. See the authorities relating to the importance of sleep which stress the importance of sleep for all ages and, in particular, for children.⁴¹
77. Mr. Faithful and his family want to be able to rest for the 8h they need each night, so he wishes there to be no flights taking off after midnight nor landing after 1 am until 7am.

CONCLUSIONS SOUGHT

78. The conclusions sought by the Applicant are:
 - A. [...];
 - B. **ORDER** the Defendant ADM to announce any exceptional night-time flights in advance if possible and to publish the justification for the exception;
 - C. **CONDEMN** the Defendants to collectively pay each member an average \$300 per month of pollution for loss of enjoyment of property;
 - D. **CONDEMN** the Defendants to collectively pay each adult member \$500 for moral damages including stress and inconvenience;
 - E. **CONDEMN** the Defendants to collectively pay each child member \$1000 for moral damages including stress and inconvenience;
 - F. **CONDEMN** the Defendants to collectively pay each member \$500 for punitive damages pursuant to article 49 of the *Charter*;
 - G. **ORDER** Defendants to collectively pay all publication costs;
 - H. **ORDER** the collective recovery of said damages;

⁴¹ These are : National Sleep Foundation's updated sleep duration recommendations: final report at <https://pubmed.ncbi.nlm.nih.gov/29073398/>, and Health Canada recommendations at <https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>, and sleepfoundation.org.

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

79. The identical, similar, or related questions of law or fact between each member of the class and the Defendants which the Applicant wishes to have decided by the class action are:
- A. Whether the Applicant and Defendants are neighbours per Art. 976 CCQ;
 - B. Whether the pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. and whether it exceeds that which is reasonable and tolerable in a residential environment;
 - C. Whether, even if the Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault;
 - D. Whether the degree of harm suffered by the class representative and other class members is unreasonable and excessive in a residential environment;
 - E. Whether the Defendants' actions or inaction constitute a fault or negligence which may attract liability under art. 1457 CCQ;
 - F. If yes, whether these actions or inactions caused harm to the class members;
 - G. Also if yes, whether these actions or inactions constitute an intentional fault;
 - H. If it is intentional or grossly negligent, whether the Defendants are liable for punitive damages;
 - I. Whether the Defendants' actions constitute an abuse of right thereby removing any authorization given;
 - J. Whether the sound waves created by the Defendants activities constitutes a thing under their control and whether they are liable for its acts under article 1465 CCQ; Whether the sound waves constitute a breach of the

atmospheric public trust, constitute ecological prejudice and/or a breach of the “patrimoine commune a la societe”;⁴²

- K. [...]
 - L. What should be the proper quantum of compensation awarded to each affected class member.
80. Other questions, particularly those relating to quantum of harm, may be resolved through the creation of sub-groups.

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

81. 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, in excess of one million, makes it impossible for these persons to meet together and negotiate a specific mandate in virtue of which they might name a mandatary, or act as plaintiffs together in the same case, as contemplated by Arts. 91 or 143 C.C.P. as well as the fact that some of them are under the age of 18;
 - B. It would be highly impracticable, costly, uneconomical, unjust, and inconsistent with the rule of proportionality, if not entirely impossible for each of the persons herein identified as class members to pursue an individual action, in particular given their economic and physical circumstances;
 - C. All the members of the class are affected in the same or a very similar manner, although to different degrees, by the behavior of the Defendants, and their interests will be better protected in a class action where the Court will have broad powers to protect the rights of absent parties than they would be if a few of these parties took individual actions;

⁴² Baudouin, *supra*, Volume 1 at 1-439.1 and related footnotes 731 to 739 and *British Columbia v Canadian Forest Products Ltd*, [2004] 2 S.C.R. 74 at paras 69 to 81.

- 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;

THE CLASS MEMBER APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS (ART 575 (4))

82. The Applicant Dwight Faithful is in a position to faithfully and properly represent the class members, for the following reasons:

- A. He lives near Trudeau Airport and has been directly affected by the pollution;
- B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the contamination and is informed on the impacts and consequences of this activity as it affected those in his neighbourhood;
- C. 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;
- D. He has no conflict of interest with the class members.

WHEREFORE, APPLICANT PRAYS THIS HONOURABLE COURT TO:

GRANT the present Application;

AUTHORIZE the institution of the class action described above;

IDENTIFY the class as:

All Quebec residents, including owners, tenants, and subtenants of immovable property, who, at any time after July [...]¹, [...]2021 and until the publication of Notices suffered noise pollution between the hours of 12PM for takeoffs and 1AM for landings and 7am, who were living both under the flight path of airplanes departing from or arriving at Montreal-Trudeau International Airport and namely:

Laval - Everything East of highway 13, estimated pop. 400,000

All of Ile Perrot - estimated pop. 10,553

Ile Bizard

Bordered by an area South of rue Cherrie to the water, between all of Rue Joly Eastward to Jacques Bizard Blvd, estimated pop. 400

All of Boucherville - south shore, estimated population 40,753

Montreal

All of Point-Saint-Charles

All of Verdun

All of Cote Saint Paul Estimated Pop. 168,868

All of Ville emard

All of Lasalle

All of Baie d'Urfe

All of Beaconsfield

Kirkland Estimated Pop. 117,940

All of Pointe Claire

All of Dorval

All of Lachine

Pierrefonds-Roxboro

From highway 13 West to Blvd St. Johns Estimated Pop. 35,000

East End Montreal to highway 25 Estimated Pop. 174,780

25West to 117/A15 and North of the 40 to the shoreline
Estimated Pop. 315,579

All of Villeray Estimated Pop. 143,853

All of Parc Extension Estimated Pop. 33,800

All of Mt. Royal Estimated Pop. 21,000

For a total population estimate of 1,090,090 people affected by excessive nighttime airplane noise.

The flight path will be detailed in Exhibit R-8 Appendix C.

ATTRIBUTE to Dwight Faithful the status of Representative plaintiff;

IDENTIFY as follows the principal questions of fact and of law to be treated collectively:

- A. Whether the Applicant and Defendants are neighbours per Art. 976 CCQ;
- B. Whether the pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. and whether it exceeds that which is reasonable and tolerable in a residential environment;
- C. Whether, even if the Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault;
- D. Whether the degree of harm suffered by the class representative and other class members is unreasonable and excessive in a residential environment;
- E. Whether the Defendants' actions or inaction constitute a fault or negligence which may attract liability under art. 1457 CCQ;
- F. If yes, whether these actions or inactions caused harm to the class members;
- G. Also if yes, whether these actions or inactions constitute an intentional fault;
- H. If it is intentional or grossly negligent, whether the Defendants are liable for punitive damages;
- I. Whether the Defendants' actions constitute an abuse of right thereby removing any authorization given;
- J. Whether the sound waves created by the Defendants activities constitutes a thing under their control and whether they are liable for its acts under article 1465 CCQ; Whether the sound waves constitute a breach of the

atmospheric public trust, constitute ecological prejudice and/or a breach of the “patrimoine commune a la societe”;⁴³

- K. Whether class members are entitled to injunctive relief;
- L. What should be the proper quantum of compensation awarded to each affected class member.

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

[...];

ORDER the Defendant ADM to announce any exceptional night-time flights in advance if possible and to publish the justification for the exception;

CONDEMN the Defendants to collectively pay each member an average \$300 per month of pollution for loss of enjoyment of property;

CONDEMN the Defendants to collectively pay each adult member \$500 for moral damages including stress and inconvenience;

CONDEMN the Defendants to collectively pay each child member \$1000 for moral damages including stress and inconvenience;

CONDEMN the Defendants to collectively pay each member \$500 for punitive damages pursuant to article 49 of the *Charter*;

ORDER Defendants to collectively pay all publication costs;

ORDER the collective recovery of said damages;

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

DECLARE that any member who has not requested his or her exclusion from the group be bound by any judgment to be rendered on the class action, in accordance with the law;

FIX the delay for exclusion at thirty (30) days following the Notice to Members, and that at the expiry members of the group who have not requested exclusion be bound by any judgment;

⁴³ Baudouin, *supra*, Volume 1 at 1-439.1 and related footnotes 731 to 739 and *British Columbia v Canadian Forest Products Ltd*, [2004] 2 S.C.R. 74 at paras 69 to 81.

ORDER the publication at any date convenient to this Honourable Court of a Notice to Members in the Le Journal de Montréal, The Montreal Gazette, or any other appropriate newspaper or publication and further

ORDER all costs of publication be borne by Defendant;

REFER the present record to the Chief Justice of this Honourable Court so that he or she may determine the district in which the class action is to be brought;

ORDER that should the class action be in another district, the clerk of the Court, upon receiving the decision of the Chief Justice, transmit the present record to the clerk of the district designated.

THE WHOLE with costs.

MONTREAL, this [...] 5 day of [...] August, 2024

Charles O'Brien
Lorax Litigation for Dwight Faithful

In support of the Amended Application Seeking Authorization, Petitioner alleges the following Exhibits, referred to in the links or available on request: *(provided on the attached USB key)*

General

Exhibit R-1: Radiation Emitting Devices act with highlighting.

Exhibit R-2: PDF of ADM's website describing noise abatement policies from
<https://www.admtl.com/en/adm/communities/soundscape/noise-abatement>.

Exhibit R-3: Environmental Noise Guidelines for the European Region-World health organization.

Exhibit R-4: PDF of ADM website describing Webtrak.

Exhibit R-5: U.S. Department of Transport - Noise levels for U.S. certified and foreign aircraft

Les Pollués de Montreal-Trudeau Actions

Exhibit R-6: Application for authorization

Exhibit R-7: Authorizing judgment : Pollués de Montréal-Trudeau c. Aéroports de Montréal, 2018 QCCS 1401

Exhibit R-8: Appendix C take off and landing paths

Exhibit R-9: Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM), 2020 QCCS 2432.

Exhibit R-10 : STEPHANIE DUTCHEN, "THE EFFECTS OF NOISE ON HEALTH, HARVARD MEDICINE MAGAZINE.

Exhibit R-11: Globalnews, "Residents in Montreal's West Island want to join class action lawsuit against Trudeau airport – Montreal."

Exhibit R-12: Canada Air Pilot July to sept 2022

Exhibit R-13: Canada Flight Supplement July to Sept 2022

Exhibit R-14A: Réponse ADM

Exhibit R-14B: Answer (NAV CANADA)

Exhibit R-14C: Réponse air canada

Exhibit R-15: Aircraft Overflight Study

Exhibit R-16A: Data collection and evaluation

Exhibit R-16B: Noise Affected Area Montreal and Surroundings

Exhibit R-17: Yul Airport Activity

Exhibit R-18A: CTV news June 16, 2024

Exhibit R-18B: CTV news June 17 2024

Exhibit R-19A: Monitoring station locations active and inactive

Exhibit R-19B: Not operational noise monitoring station Dorval airport

Exhibit R-20: CTV interview extended hours threat

Authorities:

Legislation:

Aeronautics Act, RSC 1985, c A-2.

Canadian Aviation Regulations, SOR/96-433.

Radiation Emitting Devices Act, R.S.C., 1985, c. R-1.

Jurisprudence:

Institution royale pour l'avancement des sciences c. Ville de Montréal, 2019 QCCS 929

St. Lawrence Cement Inc. v. Barrette, 2008 SCC 64.

British Columbia v Canadian Forest Products Ltd, [2004] 2 S.C.R. 74 at paras 69 to 81.

Doctrine and Other Sources:

Baudouin, J.-L., P. Deslauriers et B. Moore, *La responsabilité civile*, Volume 1 -

Principes généraux, 9e édition, 2020 [Baudouin] at 1-962 to 1-966, and as concerns “Theorie de risqué profit” 1-170

Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, 2003, Chapter 5, “Noise and Children's Development.”

Decibel Pro: dB sound Level Meter, “Comprehensive Decibel Chart of Common Sound Sources” (2022), online: <<https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>>.

Fly Lakeland: Lakeland Linder International Airport, “Aircraft Noise,” online:

<<https://www.flylakeland.com/aircraft-noise>>.

H Smith, “Innovation in supersonic passenger air travel” (Cranfield University, UK:

Woodhead Publishing Limited, 2012).

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<<https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/health-effects-airplanes-aircraft-noise.html>>.

Health Canada, “Are Canadian adults getting enough sleep?”(2019), online: *Public*

Health Agency of Canada <<https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>>.

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recommendations: final report” (2015), online: <<https://pubmed.ncbi.nlm.nih.gov/29073398/>>.

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STEPHANIE DUTCHEN, “THE EFFECTS OF NOISE ON HEALTH, HARVARD

MEDICINE MAGAZINE, ALSO INCLUDED AS EXHIBIT R-10.

Trevor M. Young, “Performance of the Jet Transport Airplane Analysis Methods Flight Operations and Regulations,” (John Wiley & Sons, Ltd, 2017).

Vincent, Karim, *Les obligations* [vol. 1], 5e éd. (2020), Art. 1465.

Annex A

	Arrivals			Note that the wind was easterly/southeasterly as it is 30% of the time resulting in planes taking off towards the city instead of lake St-Louis						
	Flight	Scheduled arrival time	Arrival Time	Aircraft	Origin	Max takeoff weight (1000kg)	Max landing weight (1000kg)	maximum noise recorded (db(A))	Airline	Recurring
18-Jul-22										
	DL4937 4	23:02	23:23	Canadair (CRJ2)	DTW	24.041	21.319	87	Delta Air Lines	daily
	AA2702	23:15	23:10	Airbus A319	MIA	68.492	56.699	93	American Airlines	6/week
	AC1072 1	23:18	1:17	Airbus A220-300	DEN	64.319	54.975	90	Air Canada	6/week
	AC8968	23:19		CRJ-900	ORD	36.504	33.34		Air Canada	daily
	TS483	23:25	23:15	Airbus A321neo	MBJ	87.996	71.849	92	Air Transat	1/week
	DL4679 3	23:26	22:54	CRJ9	MSP	36.504	33.340	88	Delta Air Lines	daily
	RV1607	23:39	1:45	Airbus A321	FLL	93.500	77.800	93	Air Canada Rouge	daily
	AC430 4	23:44	0:01	Airbus A320	YYZ	77	64.5	92	Air Canada	daily
	DL2416 4	23:45	23:31	Boeing 717-200	ATL	52.885	45.586	87	Delta Air Lines	daily
	TS611	23:50	0:18	Airbus A321	YYZ	93.500	77.800	90	Air Transat	1/week
	AC324	23:51	1:13	Airbus A220-300	YYC	64.319	54.975	90	Air Canada	6/week
19-Jul	WS598	0:32	0:22	Boeing 737-700	YYZ	70.08	58.604	89	WestJet	daily
	CM422	0:40	0:26	Boeing 737-800	PTY	78.245	65.317	92	Copa Airlines	every 2 days
	WG379	0:40	6:53	Boeing 737-800	VRA	78.245	65.317		Sunwing Airlines	2/week
	AC312 1	0:42	1:02	Boeing 737 MAX 8	YVR	82.191	69.309	90	Air Canada	daily
	AC8450 1	1:44	1:29	Embraer ERJ-175	YYZ	40.37	34.1	91	Air Canada	daily
				Note that the wind switched so that departures were towards lac St-Louis, this results in a different monitoring station capturing the data and airplanes arriving passing above it at a higher altitude.						
	AC97	6:10	6:03	Boeing 787-9 Dreamliner	GRU	254.000	192.8	80	Air Canada	every 2 or 3 days
	ACA41	6:32	6:30	Dash 8-400		29.256	28.009	74	Air Canada	6/week
	AC7901	6:40	6:27	Canadair Regional Jet 705	YQX	38.33	34.065	77	Air Canada	daily
	AC8002	6:49		Dash 8-400	YOW	29.256	28.009	74	Air Canada	daily
	AC7719	6:55	6:37	Embraer ERJ-175	YDF	40.37	34.1	81	Air Canada	daily
	AC8041 2	6:58		C-GJZD Bombardier DH8D	YSJ	15.65	15.65		Air Canada	daily