

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

NO: 500-06-000757-159

JOHN BENIZRI, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

v.

CANADA POST CORPORATION, a legal person duly constituted under the laws of Canada, having its office at 1000, De La Gauchetiere Street West, suite 235, Montreal, District of Montreal, Province of Quebec, H3B 5B8;

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN
THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER
RESPECTFULLY SUBMITS THE FOLLOWING:**

- 1. PETITIONER WISHES TO INSTITUTE A CLASS ACTION ON BEHALF OF THE FOLLOWING GROUPS, OF WHICH HE IS A MEMBER (COLLECTIVELY, THE "CLASS" OR "CLASS MEMBERS"):**

All Persons in Quebec who are directly inconvenienced by the installation of a Canada Post community mailbox on or adjacent to their property or within a radius of 10 meters of their property, following

the implementation of Respondent's plan to replace door-to-door delivery of mail parcels with community mailboxes, which began on or around 2014;

or such other class definition as may be approved by the Court;

2. PETITIONER'S PERSONAL CLAIM AGAINST RESPONDENT IS BASED ON THE FOLLOWING FACTS:

THE PARTIES

- 2.1. That Petitioner, namely John Benizri, is the co-owner of a property located at [REDACTED], the whole as more fully appears from the extract from the *Index des immeubles* with respect to said property, a copy of which is filed in support hereof as **Exhibit P-1**, (hereinafter the "**Property**") ;
- 2.2. That on or around the month of May, 2015, Respondent installed a community mailbox adjacent to or on the Property (hereinafter the "**Community Mailbox**"), the whole as will be more fully elaborated hereinbelow;
- 2.3. That Respondent is a Canadian crown corporation, which functions as Canada's primary purveyor and operator of postal services;
- 2.4. That on or around December 11, 2013, Respondent announced its intention to cease its door-to-door delivery service to residences in the urban centers across Canada, the whole as more fully appears from the printout of Respondent's announcement on its website, a copy of which is filed in support hereof as **Exhibit P-2**;
- 2.5. That following said announcement, Respondent implemented the *Five-point Action Plan* it had developed in order to, *inter alia*, convert the door-to-door delivery to community mailboxes in urban areas across the country (hereinafter the "**Action Plan**"), the whole as more fully appears from Respondent's progress report dated March 2015, a copy of which is filed in support hereof as **Exhibit P-3** (hereinafter the "**Report**");

PETITIONER'S PERSONAL SITUATION

- 2.6. That on or around June 26, 2001, Petitioner purchased the Property, the whole as more fully appears from Exhibit P-1;

- 2.7. That one of Petitioner's major considerations for the purchase of the Property was to provide his family with a high level of safety and peace;
- 2.8. That since Petitioner, his spouse and two (2) children moved into the Property, he has always received and benefitted from continuous door-to-door mail service;
- 2.9. That the Property's eastern facing side gives onto [REDACTED] Street, the whole as more fully appears from the GoogleMaps printouts corresponding to the Property area, a copy of which is filed in support hereof as **Exhibit P-4**, *en liasse*;
- 2.10. That on or around May 2015, pursuant to its Action Plan, Respondent installed the Community Mailbox on the eastern border of Petitioner's Property along Forsythe Street, the whole as more fully appears from the photographs taken by Petitioner, a copy of which is filed in support hereof as **Exhibit P-5**, *en liasse*;
- 2.11. That the Community Mailbox contains forty-eight (48) slots, corresponding to forty-eight distinct civic addresses in the vicinity, whereby each owner/occupier thereof descends upon the said Community Mailbox to recuperate their mail and/or parcels, as the case may be;
- 2.12. As a result of the foregoing conversion, Petitioner and his family have suffered serious inconveniences, including but not limited to loss of enjoyment of the Property and loss of privacy;

RESPONDENT'S LIABILITY

- 2.13. According to the Report, Exhibit P-3, particularly its page 8, Respondent is responsible for "*all installation and maintenance costs related to the Community Mailboxes*";
- 2.14. Additionally, according to the Report, Exhibit P-3, particularly its page 3 entitled "Municipal engagement", Respondent committed itself to installing the community mailboxes in locations that would meet criteria for safety, accessibility and proximity to the addresses they serve;
- 2.15. As more fully appears from the Report, Exhibit P-3, particularly its page 4, Respondent declares having met with customers prior to choosing a final location for the installation of each Community Mailbox;

2.16. In effect, in said Report, Exhibit P-3, particularly its page 4, Respondent declares as follows:

We knock on their doors to speak with residents in person and answer their questions. If a customer raises a concern about a location we have selected, we re-evaluate the site, look for alternative locations in the neighbourhood that meet our criteria, and adjust the location if possible;

2.17. However, contrary to the Report, Exhibit P-3, Petitioner did not have the opportunity to voice his concerns nor input with respect to the proposed outfit of the Community Mailbox on or adjacent to his Property;

2.18. As such, it appears that Respondent installed Community Mailboxes in an arbitrary manner, the whole as will be more fully elaborated hereinbelow;

2.19. In fact, a representative from Canada Post visited Petitioner on or around early 2015, to advise him that a Community Mailbox would be installed adjacent to or on his Property (hereinafter the “**Visit**”);

2.20. That during said Visit, the Canada Post representative did not ask for Petitioner’s opinion or permission with regards to the location of the Community Mailbox and this, contrary to its proposed procedures in determining a location for same;

2.21. In that sense, Respondent has forcibly imposed itself onto Petitioner’s Property as his neighbour and must, *ipso facto*, be responsible for all inconveniences suffered by Petitioner and all occupants of contiguous properties, as a result of the arbitrary installation of the Community Mailbox on the Property;

2.22. The result of Respondent's Action Plan has caused considerable neighbourly annoyances suffered by the Petitioner and his family, as will be more fully elaborated hereinbelow;

Neighbourly Annoyances

2.23. As a result of the increased noise, traffic, aesthetic displeasures, safety issues and loss of privacy, Petitioner has suffered damages and experienced abnormal and excessive neighbourly annoyances by Respondent, on account of the installation of the Community Mailbox (hereinafter “**Annoyances**”), the whole as will be more fully elaborated hereinbelow;

- 2.24. That said Annoyances are continuous, repetitive and substantial surpassing the limits of tolerance that neighbours owe to one another;
- 2.25. Moreover, the installation of the Community Mailbox and culmination of Annoyances shall decrease the value of the Property;

Excessive Noise

- 2.26. That the Community Mailbox is generally used by each one of the 48 households assigned to receive their mail thereat (hereinafter “**Neighbours**”) at least once a day;
- 2.27. That since the installation of the Community Mailbox, the amount of circulation on and around the Property has significantly increased, causing serious prejudice to Petitioner and his family;
- 2.28. In effect, the implementation of the Community Mailbox has turned Petitioner’s Property into a noisy activity center;
- 2.29. That the majority of Neighbours arrive by vehicle to collect their mail at the Community Mailbox;
- 2.30. In fact, while retrieving their mail, Neighbours often leave their car engine running and music and or radio blaring within earshot of the Property and contiguous properties, often disturbing Petitioner peaceable enjoyment of the Property;
- 2.31. In fact, it has become routine for Petitioner to close the windows on his Property, during the peak times that mail is recuperated at the Community Mailbox;
- 2.32. Additionally, the Community Mailbox is accessible to Neighbours twenty (24) hours a day and Petitioner and his family are often disrupted at unreasonable hours;
- 2.33. Therefore, Petitioner and his family constantly endure an excessive amount of noise, resulting in unreasonable disturbances;

Aesthetic Displeasure

- 2.34. In general, the Community Mailbox itself presents an unwanted aesthetic nuisance on account of the visual eyesore that is metal Community Mailbox with concrete base;
- 2.35. Additionally, pictures of the Community Mailbox, Exhibit P-5, reveal that Respondent proceeded to destroy Petitioner's landscaping for the installation of the Community Mailbox, which, once installed, was replaced with gravel, instead of laying seed or grass, in lieu thereof;
- 2.36. Moreover, as more fully appears from the Report, Exhibit P-3, particularly page 8, Respondent also declared its position with respect to the handling of refuse at its community mailbox locations as such :

"Canada Post does not install recycling or garbage receptacles at mailbox sites"

- 2.37. That on account of the foregoing, Neighbours retrieving their mail at the Community Mailbox are constantly discarding unwanted mail and or parcels and other garbage astray, which end up on Petitioner's Property;
- 2.38. In effect, local advertisements and flyers received in the Community Mailboxes as well as affixed thereto from residents and non-residents alike are often left for litter on the ground and thus pollute the area surrounding the Property;
- 2.39. As a result of what precedes, Petitioner is forced to clean and pick up the litter on and around the Community Mailbox and his Property on a daily basis;
- 2.40. Therefore, the Community Mailbox blemishes Petitioner's visual scenery of his Property;
- 2.41. That the foregoing creates a loss of enjoyment of the Property for Petitioner and his family;

Safety Issues

- 2.42. That the traffic that builds up around the Community Mailbox is a safety hazard for Petitioner and his family and/or any person retrieving their mail;
- 2.43. Furthermore, community mailboxes are often targets of criminal activity such as theft of parcels, identity, credit and/or other personal information;

- 2.44. That in many cases, community mailboxes are the target of vandalism (a.k.a. graffiti) and/or are subject to being used as a message board or an advertisement center, the whole as more fully appears from a series of documents published in different newspapers, a copy of which is filed in support hereof as **Exhibit P-6**, *en liasse*;
- 2.45. That despite the documented occurrences of vandalism to community mailboxes, Respondent has shown little to no interest and or capacity to thwart or otherwise deter such activities;
- 2.46. Therefore, Petitioner is justified in being concerned about his own security as well as the privacy of his mail, particularly parcels which are deposited in a shared location of the Community Mailbox;

Loss of privacy

- 2.47. That, as more fully appears from the GoogleMaps printouts corresponding to the Property area, Exhibit P-4, anyone standing in close proximity can easily see through the fence and onto the Property;
- 2.48. That it is not uncommon for Petitioner to catch people looking at him and his family in their backyard during family gatherings for uncomfortably prolonged periods;
- 2.49. As a result of the foregoing inconveniences, Petitioner and his family have suffered a loss of use and peaceful enjoyment of their private property and a loss of privacy;

3. THE PERSONAL CLAIMS OF EACH OF THE MEMBERS OF THE CLASS AGAINST RESPONDENT ARE BASED ON THE FOLLOWING FACTS:

- 3.1. The claims of each of the members of the Class are based on the same facts as those upon which the claim of Petitioner is based, as set forth above;
- 3.2. In particular, each member of the Class is the owner of a Property, adjacent to or on which has been installed a community mailbox, *or within a radius of 10 meters of their property*;
- 3.3. As a result, the members of the Class have already, or likely will in the future, experience inconveniences, nuisances, loss of enjoyment of their property and/or of their privacy;

3.4. Accordingly, each member of the Class has sustained damages similar to those sustained by Petitioner;

3.5. Petitioner is accordingly entitled to claim and does hereby claim from the Respondent, both personally and on behalf of each member of the Class, an amount to be determined by the Court for non-pecuniary damages, per Class member, retroactive to the day of installation of a community mailbox, and an amount to be determined by the Court for pecuniary damages;

3.6. Petitioner and all members of the Class have suffered damages in Quebec;

4. THE COMPOSITION OF THE MEMBERS OF THE CLASS MAKES THE APPLICATION OF ARTICLES 59 AND 67 C.C.P. DIFFICULT AND/OR IMPRACTICAL FOR THE FOLLOWING REASONS:

4.1. Class Members are numerous and are scattered across the Province of Quebec and are estimated to be in the thousands;

4.2. That at the present time, the names and addresses of the Class Members are not known to the Petitioner;

4.3. It would therefore be difficult and impractical for Petitioner to locate and contact all members of the Class to obtain a mandate to institute proceedings for their benefit;

4.4. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against Respondent. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;

4.5. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action; and

4.6. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.

5. THE CLAIMS OF THE CLASS MEMBERS RAISE IDENTICAL, SIMILAR OR RELATED QUESTIONS OF FACT OR LAW, NAMELY:

- 5.1. Should Respondent be considered as a neighbour to the Class members who had a community mailbox installed adjacent to or on their property *or within a radius of 10 meters of their property*?
- 5.2. If so, are the Annoyances suffered by the Class members beyond the limits of tolerance that neighbours owe to one another?
- 5.3. Is the devaluation in property value attributable to the installation of community mailboxes?
- 5.4. If the answers to any or all of the foregoing questions are “yes” is the Respondent liable for the loss of enjoyment, loss of privacy and loss of value of the Class members’ properties?
- 5.5. What is the amount of damages sustained by the Class, collectively, as a result of Respondent’s installation of community mailboxes?

6. THE QUESTIONS OF LAW OR OF FACT WHICH ARE PARTICULAR TO EACH OF THE MEMBERS OF THE CLASS ARE:

- 6.1. What is the extent of the pecuniary and non-pecuniary damages sustained by each member of the Class?

7. IT IS EXPEDIENT THAT THE INSTITUTION OF A CLASS ACTION FOR THE BENEFIT OF THE MEMBERS OF THE CLASS BE AUTHORIZED FOR THE FOLLOWING REASONS:

- 7.1. The Class action is the best procedural vehicle available to members of the Class in order to protect and enforce their rights herein;
- 7.2. While the amount of the damages and loss sustained by each member of the Class may differ, the actions and/or faults of Respondent and its liability thereof are identical with respect to each member;
- 7.3. Members of the Class who have been suffering the same or similar Annoyances as the Petitioner could be prevented from instituting a separate recourse against Respondent in view of the costs involved to enforce their rights compared to the value of the damages they may have suffered;

7.4. The majority of Class members could, in the absence of a class action, lead to a multitude of recourses against Respondent to determine the same issues of fact and law, and which will entail an inefficient and costly use of judicial resources, the duplication of costly expertise, and result in contradictory judgments on question of fact or law which are identical for each member of the Class;

8. THE NATURE OF THE RECOURSE WHICH THE PETITIONER WISHES TO EXERCISE ON BEHALF OF THE MEMBERS OF THE CLASS IS:

8.1. An Action in damages against Respondent to sanction the arbitrary installation of community mailboxes without consulting the Class members, in locations that are causing prejudice in the form of the Annoyances and devaluation of their property;

9. THE CONCLUSIONS SOUGHT BY PETITIONER AGAINST THE RESPONDENT ARE AS FOLLOWS:

GRANT the Petitioner's action against Respondent;

DECLARE that Respondent is liable to the Class Members for the following:

- a. Loss of property value;
- b. Loss of enjoyment of the Property;
- c. Loss of privacy;

CONDEMN the Respondent to pay the Class Members damages;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P.; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in action;

10. PETITIONER REQUESTS THAT HE BE ASCRIBED THE STATUS OF REPRESENTATIVE;

11. PETITIONER IS IN A POSITION TO REPRESENT THE MEMBERS OF THE CLASS ADQUATELY FOR THE FOLLOWING REASONS:

11.1. Petitioner was directly affected by the installation of a Community Mailbox adjacent to or on his Property;

11.2. Petitioner is well-informed of and understands the facts giving rise to the present Action and the nature of the present Action;

11.3. Petitioner is determined to devote the time necessary to act as the representative of the Class in this Action, and has demonstrated that he is dedicated to obtaining justice for all members of the Class;

11.4. Petitioner does not have any conflict of interest with the members of the Class;

11.5. Petitioner has retained competent counsel given the circumstances;

11.6. Petitioner has fully cooperated with the undersigned attorneys in the context of this Action, including answering diligently and intelligently to their questions, and there is every reason to believe that he will continue to do so;

11.7. Petitioner will fairly and adequately represent and protect the rights of the members of the Class, and will take measures with the undersigned attorneys to keep the members of the Class informed of the present Class Action;

11.8. Petitioner is in at least as good a position as any other member of the Class to serve as the Class Representative in the present Action;

12. PETITIONER SUGGESTS THAT THE CLASS ACTION BE BROUGHT BEFORE THE SUPERIOR COURT OF THE DISTRICT OF MONTREAL FOR THE FOLLOWING REASONS:

12.1. To the best of Petitioner's knowledge, the highest concentration of Class members are domiciled in the district of Montreal;

12.2. Petitioner is domiciled in the District of Montreal;

12.3. Petitioner's undersigned attorneys practice in the District of Montreal;

12.4. Respondent has a place of business in the District of Montreal, located at 1000, Rue De La Gauchetière Ouest, suite 235, Montréal, Quebec, H3B 5B8;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT:

GRANT the Petitioner's action against the Respondent;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

All Persons in Quebec who are directly inconvenienced by the installation of a Canada Post community mailbox on or adjacent to their property or within a radius of 10 meters of their property, following the implementation of Respondent's plan to replace door-to-door delivery of mail parcels with community mailboxes, which began on or around 2014;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

1. Should Respondent be considered as a neighbour to the Class members who had a community mailbox installed adjacent to or on their property *or within a radius of 10 meters of their property?*
2. If so, are the Annoyances suffered by the Class members beyond the limits of tolerance that neighbours owe to one another?
3. Is the devaluation in property value attributable to the installation of community mailboxes?
4. If the answers to any or all of the foregoing questions are "yes" is the Respondent liable for the loss of enjoyment, loss of privacy and loss of value of the Class members' properties?
5. What is the amount of damages sustained by the Class, collectively, as a result of Respondent's installation of community mailboxes?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

DECLARE that Respondent is liable to the Class Members for the following:

- a. Loss of property value;
- b. Loss of enjoyment of the Property;
- c. Loss of privacy;

CONDEMN the Respondent to pay the Class Members damages;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P.; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in action;

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 60 days from the date of publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., pursuant to a further Order of the Court, and **ORDER** Respondent to pay for said publication costs;

THE WHOLE with costs, including the costs of all publications of notices.

MONTREAL, August 31, 2015

Legal Logik Inc.
Attorneys for Petitioner