

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000937-181

SUPERIOR COURT
(Class Action)

**MARIE-HELENE DESAUNETTES, lawyer
practising at 1100 Avenue des Canadiens-de-
Montreal, Suite 900, Montreal, Quebec, H3B 2S2**

Applicant

v.

**RÉSEAU DE TRANSPORT MÉTROPOLITAIN, a
legal person established pursuant to an "Act
Respecting The Réseau De Transport Métropolitain",
R-25.01, 2016, c. 8, s. 4. doing business under the
brand and name EXO, having its office at 700 rue
de la Gauchetière Ouest, 26e étage, Montréal,
Québec H3B 5M2**

Respondent

MODIFIED JUDICIAL APPLICATION TO AUTHORISE CLASS ACTION PROCEEDINGS # 1

THE APPLICANT RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

[1] Applicant asks to be named representative and to obtain this Honourable Court's authorization to proceed with a class action on behalf of the classes of individuals as defined below:

In these proceedings:

1. EXO users are all persons that traveled on the EXO and its predecessors during the (3) three years preceding this application;

The proposed **Classes** are defined as follows:

2. All current and former users of EXO and its predecessors' including those residing in the Greater metropolitan area of Montreal, who suffered damages caused by EXO's and its predecessors' fault.
3. Family members of current and former users of EXO and its predecessors.

- [2] The members of the Classes have variously suffered moral and pecuniary damages including all damages related to stress and inconvenience, anxiety, out-of pocket expenses, loss of income, loss of opportunity for advancement.

II. PARTIES

THE APPLICANT

Maître Marie-Helene Desauettes (hereinafter Mtre Desauettes)

- [3] Mtre Desauettes is a long-time user of EXO and its predecessors and commutes on the Réseau de transport métropolitain (“RTM”) and Agence métropolitaine de transport (“AMT”) and now the EXO, from her home in Laval to her law offices at Windsor Station in downtown Montreal.
- [4] Mtre Desauettes has suffered serious prejudice and damages including stress and inconvenience, anxiety, out of pocket expenses, loss of income, and moral damages as a result of EXO’s and its predecessors’ continuous poor service and fault.
- [5] Members of Mtre Desauettes’ family have also suffered serious prejudice and damages resulting from EXO and its predecessors’ fault including stress and inconvenience, anxiety, out-of pocket expenses, loss of income, and moral damages as a result of EXO’s and its predecessors’ continuous poor service and fault.

THE DEFENDANT

- [6] Defendant, Réseau de transport métropolitain is a legal person established pursuant to the *Act Respecting The Réseau de Transport Métropolitain*, R-25.01, 2016, c. 8, s. 4. and now doing business under the brand and name EXO, and replacing the AMT and its predecessors and is responsible for providing public transit on and around the greater Montreal metropolitan area.

III. THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT

- [7] At all material times, the Defendant and its predecessors had a duty and obligation to respect the civil rights, including the contractual rights of the members of the Classes, pursuant to the schedule and services for those fares and passes purchased and relied upon by those members.
- [8] In addition, the Defendant and its predecessors owed a duty of care and diligence to members of the Classes to ensure reasonable care and service on the EXO and its predecessors’ line, while respecting their obligations pursuant to the schedule and services for those fares and passes purchased and relied upon by those members.
- [9] More specifically, the Defendant and its predecessors’ obligations included, *inter alia*, duties to:
- (a) use reasonable care to ensure they respected their obligations to the Classes;

(b) establish and enforce appropriate policies, codes, guidelines and procedures to ensure all of the above-mentioned obligations were met and respected.

[10] However, the Defendant and its predecessors breached all the above-cited obligations and such breaches constitute a gross negligence and fault, lack of care and lack of proper maintenance of the rolling stocks/trains, as well as any necessary precautions or preventative measures.

[10.1] In addition to continual tardiness, and frequent cancellations on the majority of Defendant's train lines, the Defendant's Deux-Montagnes line is often overcrowded and the constant promises of new, clean, and reliable double-decker train cars to alleviate this problem, especially during rush-hour, remain largely unfulfilled to this day. Moreover, the dilapidated state of its current rolling stock/trains, as well as the poor quality maintenance of same (even neglect), demonstrate a pattern of behavior commensurate to the Defendant's continued breach of its obligations to class members as well as a wanton disregard for those class members and all users of its service.

[11] Indeed, the Defendant and its predecessors have a long history of poor service and care to the Classes that culminated in atrocious service during the winter of 2017-2018, the months of June and July 2018 and significant further service disruptions, reductions and cancellations are now announced, whereby the Defendant will continue to breach its obligations to the Classes, where at the same time, raising its fees/costs.

[12] On July 17, 2018, Defendant stated it will no longer ensure punctuality nor performance on the Deux-Montagnes and Mascouche lines, and therefore guarantees such disruptions and continued breach of its obligations to the proposed Classes.

[13] The above-described conduct and failures of the Defendant and its management was deliberate. In many cases it lasted for years and represented a marked departure from the ordinary standards of civility, care and decent behaviour. In the alternate, Defendant's actions are consistent with a pattern of behaviour demonstrating willful blindness, general negligence, abuse and disregard for its clientele/users, and their reliance on the contractual relationships between themselves and Defendant.

[14] Moreover, the Defendant has publicly recognized the foregoing while admitting to the extent of its poor and inadequate service, but has failed to take appropriate action to remedy this now established pattern.

[15] All of the above-mentioned conduct, and the Defendant's failures to respect its obligations, constitute civil faults, breaches of the contractual rights of the members of the proposed Classes and breaches of its general obligations towards the members of the proposed Classes.

[16] Consequently, the members of the Classes have variously suffered serious injuries caused by Defendant's fault and seek all consequential moral and pecuniary damages including all damages related to stress and inconvenience, out of pocket expenses, loss of income, loss of opportunity for advancement, and punitive damages.

IV. THE CLAIMS OF THE MEMBERS RAISE IDENTICAL SIMILAR OR RELATED QUESTIONS OF LAW OR FACT

[17] Applicant respectfully submits that the following common or related questions of law and fact arise from the allegations contained in these proceedings:

- (a) Did the Defendant, its management and senior officers owe the members of the Classes a duty to respect their contractual and legal rights and to provide reliable and punctual service to its users?
- (b) Did the Defendant, its management, and senior officers' wrongful conduct cause or give rise to consequential damages that can be recouped by the members of the Classes and, if so, in what amount?
- (c) Did the Defendant, its management, and senior officers' wrongful conduct cause or give rise to moral and/or punitive damages that can be recouped by the members of the Classes and, if so, in what amount?

[18] Accordingly, Applicant seeks the following conclusions to be certified by this Honourable Court:

DECLARE that the Defendant, its management and its senior officers owed a duty to the members of the Classes to:

- (i) use reasonable care to ensure reliable and punctual service to the members of the Classes;
- (ii) establish and enforce appropriate policies, codes, guidelines and procedures to ensure all of the above-mentioned obligations were met and respected;
- (iii) respect the legal rights of the members of the Classes;

DECLARE that the Defendant, its management and its senior officers breached the above-cited duties as regards the members of the Classes;

ASSESS the damages suffered by the members of the Classes on a collective basis and **CONDEMN** the Defendant and its predecessors to pay such damages on a collective basis **OR IN THE ALTERNATIVE, DECLARE** that the damages suffered by the members of the Classes were so suffered on an individual basis and **ORDER** the Defendant and its predecessors to pay such damages on an individual basis;

CONDEMN the Defendant to the payment of compensatory, moral and punitive damages in the amount determined by the Court.

ORDER the Defendant to take all necessary measure to remedy its poor service and compensate the Classes.

V. THE COMPOSITION OF THE CLASSES MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES OF MANDATE

- [19] There are thousands of members of the Classes located throughout and beyond the Montreal metropolitan community of all ages and professions.
- [20] Given the number of potential members of the Classes and their geographic disposition, it would be difficult or impracticable to address the issues raised in these proceedings on an individual basis or by way of a mandate.

VI. THE PROPOSED REPRESENTATIVE IS IN A POSITION TO PROPERLY REPRESENT THE CLASSES

- [21] Mtre Desaunettes is a well-regarded lawyer with extensive expertise in litigation and has the necessary time and expertise to devote to this case.
- [22] Mtre Desaunettes represents current and former users and their family members of EXO and its predecessors and has the necessary time and expertise to devote to this case.
- [23] Mtre Desaunettes has retained experienced counsel and she intends to mandate experts experienced in the subject matter of these proceedings.
- [24] The Applicant has the knowledge, experience, dedication and time necessary to advance the class action proposed in these proceedings.
- [25] Accordingly, Mtre Desaunettes is well placed to represent the Members of the Classes.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

AUTHORISE the proposed class action;

AUTHORISE the Classes:

The Classes: All current and former users of EXO and its predecessors including those residing in the Greater Region of Montreal who suffered damage caused by EXO and its predecessors' fault.

All family members of current and former users of EXO and its predecessors.

NAME Mtre Marie-Helene Desaunettes as representative of the Classes;

AUTHORISE the following common questions of fact and law:

(a) Did the Defendant, its management and senior officers, owe the members of the Classes a duty to respect their contractual rights and to provide reliable and punctual service to its users?

(b) Did the Defendant, its management and senior officers, wrongful conduct cause or give rise to consequential damages that can be recouped by the members of the Class and, if so, in what amount?

(c) Did the Defendant, its management and senior officers, wrongful conduct cause or give rise to moral and/or punitive damages that can be recouped by the members of the Classes and, if so, in what amount?

AUTHORISE the following conclusions to the class action:

DECLARE that the Defendant, its management and its senior officers owed a duty to the members of the Classes to:

1. *use reasonable care to ensure reliable and punctual service to the Classes;*
2. *establish and enforce appropriate policies, codes, guidelines and procedures to ensure fulfillment of all of the above-mentioned obligations;*
3. *respect the legal rights of the members of the Classes;*

DECLARE that the Defendant, its management and its senior officers breached the above-cited duties as regards the members of the Classes;

ASSESS the damages suffered by the members of the Classes on a collective basis and **CONDEMN** the Defendant to pay such damages on a collective basis **OR IN THE ALTERNATIVE, DECLARE** that the damages suffered by the members of the Classes were so suffered on an individual basis and **ORDER** the Defendant to pay such damages on a individual basis;

CONDEMN the Defendant to the payment of compensatory, moral and/or punitive damages in the amount determined by the Court.

ORDER the Defendant to take all necessary measures to remedy its poor service and compensate Exo users and their families;

AND TO THIS END:

DECLARE the Defendant liable for the cost of judicial and extrajudicial fees and disbursements, including fees for experts and experts' reports incurred in the present matter for and in the name of the Applicant and Class Members and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay the Applicant and Class Members the above-

mentioned sums with interest at the legal rate, plus the additional indemnity provided for in article 1619 C.C.Q., to accrue from the date of service of the present motion as well as additional indemnity resulting from compound interest in virtue of art. 1620 C.C.Q. following the expiration of thirty days from a judgment to intervene in a present motion;

CONDEMN the Defendant to pay the costs incurred for all investigations necessary in order to establish the liability of Defendant in this matter, including the extrajudicial fees of counsel for Applicant and Class Members and extrajudicial disbursements, including the costs of experts and experts' reports;

ORDER the Defendant to take all necessary and appropriate measures to remedy its poor service and compensate the Classes.

RENDER any other order that this Honorable court shall determine may be just and proper;

THE WHOLE WITH COSTS, including the cost of notices, the costs of experts and experts' reports and the costs of presenting those reports in court.

Montreal, August 6th, 2018



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(Article 571 and following C.C.P.)
Original

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