

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

No: 500-06-001006-192

ROBERT IDSINGA, residing and domiciled at
87 1ere Avenue Nord, Pierrefonds-Roxboro,
Judicial District of Montréal, Province of
Québec, H8Y 2K8

and

JOANNA LEMIEUX and husband, NAME, both
residing and domiciled at 8 Berube Cr., L'Île-
Bizard (City of Montréal), Judicial District of
Montréal, Province of Québec, H9E 1J1

Plaintiffs

-vs-

NORMAND MARINACCI, Mayor of the
Borough of L'Île-Bizard–Sainte-Geneviève (City
of Montréal), residing and domiciled at 486,
chemin Monk, L'Île-Bizard, Judicial District of
Montréal, Province of Québec, H9E 1B2 and

BOROUGH OF L'ÎLE-BIZARD–SAINTE-
GENEVIÈVE(City of Montréal), a public legal entity
having its headquarters at Hotel de Ville L'Île-Bizard,
350 Montée de l'Église, L'Île-Bizard, Judicial District
of Montréal, Province of Québec, QC H9E 1B5

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE**
(Article 574 ff., C.C.P.)

PLAINTIFFS RESPECTFULLY SUBMIT:

1. Plaintiffs Robert Idsinga, Joanna Lemieux and her husband [NAME] wish to institute a class action on behalf of the natural persons forming part of the class hereinafter described, of which the Plaintiffs are members:

All persons who reside in any part of the Province of Quebec, as well as flora, fauna, who suffered moral, physical, and/or psychological damages as a result of unnecessary flooding due to improper decisions made by the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève. Given the pervasive, escalating and cumulative effects of flooding and related pollution, their intentionally denying Charter rights and the bad faith of those decisions, punitive damages are equally due to the elderly, disabled, the dispossessed, flora and fauna.

2. The facts on which Plaintiff Idsinga's personal claims against the Defendants are based are presented below, in sub-paragraphs A through KKK. Facts in quotation marks are provided directly by Plaintiff Idsinga, whose references to "the petition" refer to a petition to institute a class action against the Mayor and the Borough circulated by Plaintiff Idsinga in mid-May 2019;

A. Beginning on or about **April 16, 2019**, the Borough of L'Île-Bizard–Sainte-Geneviève, located at the western edge of the Island of Montréal between the Lake of Two Mountains and the Rivière des Prairies and primarily situated on the island named Île Bizard, began to experience excessive rain conditions, creating an increasing risk of serious flooding in the Borough;

B. The same rain conditions also created similar flood risks in the neighboring Borough of Pierrefonds-Roxboro as well as various other parts of southern Québec;

C. Both the Borough of L'Île-Bizard–Sainte-Geneviève and the neighboring Borough of Pierrefonds-Roxboro had suffered extensive flood damage from extreme flood conditions as recently as the spring of 2017;

D. On about **April 19, 2019**, the water levels in both the Lake of Two Mountains and the Rivière des Prairies rose to levels that resulted in flood conditions as water began to overtop parts of the banks of both the northern and southern edges of the Borough of L'Île-Bizard–Sainte-Geneviève [hereinafter "the Borough"].

E. Severe and substantial flooding occurred on Île Bizard, particularly on the streets and in the neighbourhoods of weakest economic means, and this result occurred due to a

lack of preparation and care by the Mayor and the Borough in relation to those areas.

F. Specifically, the Mayor announced that there would not be enough sandbags for all residents and that it was up to residents to protect their own dwellings. This left vulnerable persons, such as the elderly, handicapped, and those with health and mobility issues at a grave disadvantage. With no assistance offered to them in order to protect their homes, they had nothing to do but watch as floodwaters rose around them.

G. Additionally, the Mayor made decisions that effectively resulted in a deprivation of effective assistance to people in the lower-income neighbourhoods and vulnerable residents that would have otherwise been provided by both the Canadian Forces, who had arrived in the area to provide emergency assistance, and by civilian volunteers.

H. As a direct result of the lack of preparation and proper emergency response, a certain neighbourhoods, including a trailer park, and many vulnerable persons suffered extensive flooding damage and had little assistance.

I. The flooded waters were severely contaminated and oil slicks, human waste and garbage were present in the flood waters, which led to a declaration that the water was non-potable, even if boiled. Meanwhile, clean water distribution to residents was haphazard and poorly organized, again putting the most vulnerable people at risk.

J. On Rue Joly the military was initially allowed into the area *but* were not given permission to continue when initial work proved insufficient and there was also an interaction with volunteers from Pierrefonds-Roxboro where they were threatened to be arrested if they didn't cease operations.

K. The trailer park was allowed to flood. Some members of the military indicated to plaintiffs that they wanted to do sand bagging there but the mayor would not make the request. As a result, some sand bagging was done but then abandoned.

L. Aid offered from the neighbouring Borough of Pierrefonds-Roxboro was turned back.

M. Residents of Île Bizard, especially vulnerable residents suffered numerous health and safety risks as a result of the decisions taken by the Mayor and the Borough.

N. Risks to wildlife, pets and other flora and fauna also occurred or were presumed to occur given the high level of water contamination in flood waters. Pets, for example, were becoming ill from drinking the flood waters.

O. Plaintiff Idsinga states: "I have limited professional experience in disaster response, but I am a medical professional, EMT-W (Emergency Medical Technician - Wilderness) and I also used to work for the military as a member of F.E.D. Platoon at

military base CFB Farnham (Québec), training soldiers to deal with refugee issues in other countries.”

P. “It should be noted that the number of signatures for the amount of time spent is relatively small because almost every single person I encounter feels the need to share their story and tell me how they have been suffering. For some of the older people, I needed to spend sometimes an hour or more to comfort them. On top of that, there are many empty homes due to the areas being unhealthy to live in. This makes for a very slow process in collecting signatures.”

Q. “My first trip into the flood zone on Île Bizard was to the trailer park located at the west end of the island on the Lac des deux Montagnes, on **May 13, 2019**. This area was the hardest hit region on the island, and consists mostly of fairly impoverished people living in mobile homes.”

R. “The trailer park community includes approximately 75 homes, and is situated on the following streets: Rue Lucien, Rue Roger, Rue Fernand, Rue Daniel, Rue Harris, Rue Michel, Rue Jacques and Rue Marc. On my first day I visited 35 homes. The water was deep and highly contaminated.”

S. “I received 15 signatures on the petition from residents of the trailer park community, and two people declined.”

T. “Most of the trailer homes were empty. For every five homes there was only one inhabited, indicating that some residents had perhaps been able to evacuate.”

U. “I witnessed that many of those left behind were elderly.”

V. “Some people were exhibiting breathing problems possibly due to exposure to problems connected to the flooding.”

W. “I witnessed that two of the people I encountered were mentally handicapped.”

X. “I witnessed that some people I encountered had physical handicaps.”

Y. “Most people I encountered expressed that they felt abandoned by the Borough.”

Z. “This area was declared contaminated as the drinking water being undrinkable even if boiled, so people were advised to not drink it at all.”

AA. “Some of the people told me that they were drinking the water anyway, because they were physically unable to go out and get bottled water. I tried to get a local aid group, On Rock, to deliver water to them.”

BB. “On my second visit to the flooded area, **May 15, 2019**, I requested that Julie Zaphira, join me. We returned to the trailer park. The first time I visited the flooded area, I had noticed that some elderly people which I observed from a distance through their windows would not answer the door. They seemed afraid. I reasoned that they might be more comfortable if it was a man and woman visiting them.”

CC. “I observed that impoverished seems the norm for the people living in the trailer park community.”

DD. “I visited roughly 28 homes and received 11 signatures on the petition and three people declined. Some of the people who declined said they might join the action later if they see enough others participate.”

EE. “I noticed two people infirm and needing bottled water.”

FF. “The foul smell of the contaminated water was increasing as it became more stagnant. I learned that sewage from the local septic systems is leaking into the water.”

GG. “On **May 16, 2019**, I went to the nearby Holiday Inn & Suites in Pointe-Claire to talk to people who had departed the flood zone to stay at free lodging being offered there.”

HH. “I met with one disabled person who was unable to walk in the flood waters due to a broken foot which happened during the flooding.”

II. “I then went back to the trailer park and met Raymond Hogue, a stroke victim who was living in one of the worst parts of the affected area. He is partially disabled and walks with a cane. He expressed feelings of being abandoned.”

JJ. “I then went to visit Rue Barabé, officially called “Croissant Barabé” and located on the north bank of Île Bizard, on the edge of the Lake of Two Mountains, which was badly affected. One disabled person there and one highly stressed and suffering possible mental health problems due to lack of sleep from monitoring pumps.”

KK. “I also noted one individual, the owner of a home on that street, was exhibiting signs of possible mental illness problems due to lack of sleep. He was one of a number of the volunteers trying to build dikes to protect homes.”

LL. “In total, I encountered five people on Rue Barabé and all of them signed the petition.”

MM. “On **May 17, 2019**, I visited Rue Jean-Yves. I only visited two homes but got 11 signatures. None refused. Many people came to me on the street in order to sign the petition.”

NN. “Rue Jean-Yves is in a middle-income area with some elderly. Individual homes of value estimated as \$350,000 or less. Many have no savings, only investment in their home, and spoke of concerns that their homes are probably worth a lot less due to flooding.”

OO. “People I encountered on Rue Jean-Yves expressed extreme anger at the Mayor of the Borough over his ineffective preparation and response to the flooding.”

PP. “On **May 18, 2019**, I visited Rue Jean-Yves again. Eight people signed the petition. None refused.”

QQ. “One man expressed how the business he runs from his home hasn't been able to function for about a month, and complained of a big loss of income.”

RR. “People at one address on Rue Jean-Yves said they needed food. There was one diabetic in the family and no food available.”

SS. “On **May 20, 2019**, I visited Rue Joly. Nineteen people signed the petition. Three people refused but with the condition that they would sign if they see enough other people sign. One person verbally assaulted me because of my efforts to organize the class action.”

TT. “I was told by local residents of Rue Joly that the military did help on this street and built one dike, but when the dike failed the Mayor did not allow the military to return to fix the problem. Before starting this class action, I encountered the military on this street and they talked to me about their frustration with the mayor not giving permission to help this area, and that volunteers from Pierrefonds-Roxboro were prevented from helping as well.”

UU. “During this visit on **May 20, 2019** I was told that a social worker visited recently, after the flood waters had almost completely disappeared.”

VV. “Also on **May 20**, I encountered the Mayor of the Borough, who with his wife and another Borough councillor, confronted me in a way that I perceived as an attempt to intimidate and entrap me.” [This encounter is described in Plaintiff Idsinga's email message to Charles O'Brien sent on **May 20, 2019** at 21:59 and produced herewith as **Exhibit R-1**];

WW. “In the late evening of **May 20**, I was called by the local aid group, On Rock, whose manager is Craig Shaw. He informed me that they would no longer be working with the Mayor of Île Bizard. He has a lot of information about the failure of the mayor to support the people who needed it. His group did a lot of work to deliver food and to build sand bag dikes to protect many homes. Much of this effort was hampered by the Mayor.”

XX. “I have various photographs and videos of the flooded areas,”[These photographs and videos are produced herewith as **Exhibit R-2**];

YY. “I did not visit all the flooded areas. There are still many affected streets where there are people affected by the flooding who want to sign. I have also been contacted by local residents of Île Bizard on Facebook requesting a meeting to sign the petition. I attempted to reach the nearby area of Île Mercier, which is also part of the Borough, but was stopped by the police and not allowed to enter. I planned on going there by boat but now there is also a restriction on boats going to the island.”

ZZ. “Locals tell me they feel they are being forced to abandon their homes.”

AAA. “There are a number of streets I still need to visit, such as Roy and Montigny and others. I expect I will have a similar sign-up rate on the petition as the sign-up rate on July given that the area affected by flooding was similar.”

BBB. “On **May 21, 2019**, I filed an access to information request for the military reports in respect to the flooding.” [This access to information request is produced herewith as **Exhibit R-3**];

CCC. Plaintiff Joanna Lemieux and her husband rent property on the water and have been very seriously prejudiced by Defendants actions and omissions

DDD. Her husband, the third Plaintiff, is a self-employed construction worker, who has been entirely unable to work for over a month and lost income as a result;

EEE. Joanna Lemieux, is suffering from an unrelated physical injury has been completely unable to leave the property for physio-therapy which has aggravated her physical condition as a direct result of Defendants’ actions and omissions;

FFF. They have had no road access for over one month or been able leave their property, thus in contravention of their right to mobility, as well as a threat to their *Charter* right to security of the person;

GGG. As they have to “man the pumps” they have only had about one hour of sleep per night for over one month, further breaching their rights to Security of Person and a healthy environment;

HHH. Both have suffered incredible stress and psychological damage;

III. Both claim punitive damages for intentional breaches of their most fundamental rights and claim as well on behalf of local flora and fauna which are also protected by the Quebec *Charter* and the *Civil Code* of Quebec;

JJJ. As the Mayor denied public pumps for their street, the fact they have essentially lived in an open sewer for over a month is a direct result of Defendants' omissions;

KKK. They will be leaving Ile. Bizard due to this hardship, thus indicating the serious nature of their damages as well as the breach of their right to inviolability of the home.

3. 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 Plaintiffs' individual recourses, as is made evident through the following documents:

A. A copy of a petition to institute a class action against the Mayor and the Borough circulated in mid-May 2019 and signed by approximately 70 Borough residents as of the date of this Application is filed by Plaintiffs and produced herewith as **Exhibit R-4**;

B. All of the class members are neighbours within the meaning of Art. 976 C.C.Q. neighbourhood annoyance and assert the following claims:

Class members suffer from the cumulative effects of flooding produced and emitted by all Defendants including the willful blindness, gross negligence and failure to protect citizens' fundamental rights, Defendants having contravened Sections 19.1 and 20 of the *Environment Quality Act* c. Q-2

C. Defendants, including the municipal government by their gross negligence and bad faith, have contravened Articles 1, 5, 6, 7, 8, 46.1, 48 and 49 of the *Quebec Charter of Human Rights and Freedoms* CQLR c. C-12;

D. In particular, Respondents have acted intentionally, wilfully, negligently in their failure to recognize and protect citizens, flora and fauna from the cumulative effects of flooding and contaminated water.

E. Respondents, well aware of the risks of flooding, have intentionally, wilfully, negligently and in concert with the other Defendants, failed to protect citizens, flora and fauna from the deleterious cumulative effects of flooding, in particular as concerns children, the elderly, the disabled, flora and fauna;

F. All Defendants have and continue to commit faults within the meaning of Art. 1457 C.C.Q., causing continuing bodily, moral and material injury including health damages, damages to nature and the environment, for which reparation is due;

G. As well, the class members are entirely justified in having the damages immediately curtailed, such that the injunctive relief set out herein is warranted and in the public interest, and corrected future generations' interest, nature and the environment's interest. The damage alleged herein is, for the most part, difficult and expensive impossible to reverse and becomes worse over time;

- H. Class members allege that 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;
 - I. Defendants intentionally failed to protect and breached the Charter rights of the elderly and the disabled, flora and fauna, for which exemplary and punitive damages should be awarded;
 - J. Class members allege failure to warn class members of flooding as a breach of a legal duty/ (fault causing damages) contamination and the Mayor and the Borough of L'Île-Bizard-Sainte-Genève, Defendants' knowledge of the dangers of those decisions;
4. The composition of the class makes the application of articles 59 or 67 of the *Code of Civil Procedure* difficult or impractical because:
- A. The number of physical persons affected, at least 1,000, 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. 59 or 67 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;
 - D. Contrarily, 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 the Quebec Court of Appeal, stating that class action suits are by far the most appropriate manner of litigating environmental claims given the large number of victims and the exceptional cost of such litigation;
 - E. Moreover, due to the significant experts' costs associated with the litigation of this matter, it is in the best interests of each of the members of the Class, and of justice, that the institution of a class action be authorized.
5. The identical, similar or related questions of law or fact between each member of the class and the Defendants, which Plaintiffs wish to have decided by the class action are:

- A. Whether the inconvenience, discomfort, stress, economic and health problems that were suffered by each of the members of the class were caused by/or created as a result of unnecessary flooding and contamination
- B. Presumptive evidence of causality i.e. that given the “serious, precise and concordant” facts alleged, this Honourable Court is entirely justified in coming to a presumption of fact that cumulative flooding and contamination causes serious health effects to humans, flora and fauna and causes cancer for a significant number of humans. As a result of this prima facie presumptive evidence, this Honourable Court should conclude that the burden of proof shifts to Defendants who now must prove the cumulative effects of this flooding are not harmful to humans’ flora and fauna. The approach is entirely consistent with the precautionary principle and the purposes of deterrence and the public interest in environmental protection (Court of Appeal *Carrier* decision) which forms the basis of Quebec environmental class actions;
- C. 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.*”);
- D. Whether the troublesome flooding and pollution described herein contravene art. 20 *in fine E.Q.A.* since they “porte atteinte au confort de l’être humain”;
- E. Whether the pollutants resulting from flooding constitute “contaminants” within the meaning of Art. 1(5) of the *E.Q.A.* and further contravene Arts. 6.01, 7.01, 7.02, 7.04, 7.05, 7.06, 7.08, 7.09 and must be statutorily recognized as such;
- F. Whether the flooding and resulting pollution constitute a nuisance within the meaning of Article 976 C.C.Q. as they exceed that which is reasonable and tolerable in a residential environment;
- G. Whether the flooding and resulting pollution constitute an abuse of right within the meaning of Articles 6 and 7 C.C.Q. as exercised in bad faith, with the intent to injure another or exercised unreasonably;
- H. Whether the flooding and resulting pollution constitute neighbourhood annoyance beyond reasonable levels such as to trigger the provision of Art. 976 the *Quebec Civil Code*, additionally if that flooding and pollution constitutes a fault, was it intentional and whether the governmental Defendants were complicit therein, such that punitive, exemplary and treble damages are warranted pursuant to *Ciment du St. Laurent Inc. vs. Barrette* [2008] 3 S.C.R. 392 and, as concerns exemplary damages, against governments, *Hinse vs. Canada* [2015] S.C.C. 35, art. 1457 C.C.Q. and s.49 of the *Quebec Charter* as well as L. Perret “*De l’impact de la charte des droits et libertés de la personne sur le droit civil des contrats et de la responsabilité*” (1981), 12 R.D.J. 121 at page 170. Plaintiffs claims that all involuntary exposure to harm should be compensated by treble damages as set out in the Ford Pinto line of jurisprudence;

- I. Whether, given the fiduciary duty owed by the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève and imposed by the Public Trust Doctrine, any impediment, contamination or diminished use of public roadways or public lands is strictly prohibited and in breach of that fiduciary duty;
- J. Whether, given that the Public Trust Doctrine further protects the environment including flora and fauna, Plaintiff is, as a result, entitled to seek an injunctive order that all flooded lands be returned to their condition and environmental cleanliness prior to the illegal flooding described herein.
- K. Whether Defendants failed to warn (as a breach of a legal duty/ (fault-causing-damages): Did Defendants' know there would be flood damage and if so, when?
- J. Whether Defendants:
- (i) committed willful errors, acts and omissions with regard to flood damage protection such that their liability is *solidary* or *in solidum* (Art. C.C.Q. **1480**: Where several persons have jointly participated in a wrongful act or omission which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused the injury, they are *solidarily* bound to make reparation there for. *Roy c. Mout* 2015 QCCA 692; See also *Montreal c. Biondi* 2013 QCCA 404, at para. 150 and fn. 44 concerning apportionment of liability in a class action pursuant to Art. 1478 C.C.Q.)
- (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; (See *Hinse vs Canada* 2015 SCC35 where the Minister of Justice was found to have committed a fault pursuant to Art. 1457 C.C.Q. and assessed punitive and compensatory damages pursuant to Sec. 41 of the *Quebec Charter* for "unlawful and intentional interference" with *Charter* Rights.)
- L. Whether, even if 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 as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas* and *Ciment St-Laurent*;
- M. The right of the Plaintiffs and each member of the class to claim damages, as well as moral, exemplary and Charter damages, from the Defendants;
- N. Whether Defendants are jointly and severally liable (or liable in solidum) for the damages caused to Plaintiffs and the members of the class;

- O. Whether Defendants were at fault in not taking sufficient measures to assure that flooding and resulting pollution did not create nuisance, exceed safe levels, or constitute an abuse of right, and whether their actions in this regard were intentional and/or fraudulent;
- P. Whether, having knowledge of the nuisance and/or abuse of right, Defendants were at fault in not acting in a timely manner to curtail the flooding and resulting pollution alleged;
- Q. Whether contaminated spills and/or other unplanned releases of water referred to herein breach Arts. 6 (peaceful enjoyment and free disposition of property) and 46.1 of the *Quebec Charter* (the Right to a healthful environment and one respectful of biodiversity) and whether that unlawful interference entitles Plaintiffs and all other victims to obtain the cessation of that interference and, as intentional, punitive damages pursuant to Art. 49 of the Quebec Charter;
- R. Whether Plaintiffs may claim on behalf of affected fauna, and more specifically, whether the displaced or harmed fauna must be returned in the same numbers and to the same locations and in a safe environment by the Defendants pursuant to the rule in the Washington state Pacific Northwest decisions of Mr. Justice George Boldt and *Plantons A.et P.inc. c. Delage*, 2015 QCCA 7;
- S. Whether, by failing to adequately regulate and apply laws, regulations, codes or bylaws, the governmental entities named herein were at fault, acted in bad faith and willingly participated in or sanctioned flooding and resulting pollution and the breach of class members' fundamental rights;
- T. Whether the awarding of treble damages is justified in the circumstances;

6. The conclusions sought by the Plaintiffs are:

CONDEMN the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève to pay damages for harm to property and breach of Charter rights;

CONDEMN the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève to pay punitive damages;

ORDER the collective recovery of said damages and **AUTHORIZE** the distribution of the balance in equal amounts between the members of the class;

ORDER Defendants jointly and severally solidarily, and *in solidum*, to remediate the environment where fauna and flora that have been negatively impacted by the flooding and resulting pollution alleged herein such that they return in the same number and same location to where they were found prior to the flooding and resulting pollution;

ORDER that the precautionary principle be applied to the legislation, regulation, monitoring, abatement and remediation of flooding and resulting pollution in Quebec;

MAKE ANY OTHER ORDER this Honourable Court deems appropriate.

7. The Plaintiffs request that he be ascribed the status of Representative.
8. The Plaintiffs are in a position to represent the members adequately, for the following reasons:
 - A. Plaintiffs Joanna Lemieux and Husband live in a neighbourhood directly affected by the flooding and resulting pollution described herein.
 - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the flooding and resulting pollution, and is informed on the impacts and consequences of this activity as it affected those in the neighbourhoods identified under the description of class presented above;
 - C. He gathered the names, addresses and phone numbers of 69 persons who have been affected by the flooding and resulting pollution (**Exhibit R-4**). He also gathered information on the nature of the various harm and inconvenience suffered by those persons;
 - D. 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.
 - E. He has acquainted himself with the concerns of many members of the class and has been present and involved at every stage of the proceedings;
9. The Plaintiffs are in a position to represent the members adequately as:
 - A. He has been a victim of the flooding and resulting pollution in the borough directly adjacent to the Borough of L'Île-Bizard–Sainte-Geneviève;
 - B. He has acquainted himself with the victims;
 - C. He has prepared the evidence in these proceedings and will continue to do so.
10. The Plaintiffs request that the class action be brought before the Superior Court of the District of Montreal for the following reasons:

- A. The Defendants, being the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève, allowed flooding and resulting pollution, property and Charter damages in the Borough of L'Île-Bizard–Sainte-Geneviève, Quebec;
- B. The flooding and resulting pollution complained of that caused the harms suffered by Plaintiffs and the other class members was carried out in the Province of Québec;
- C. Plaintiffs as well as the members of the class which they represent, all reside in the Province of Québec;
- D. There exists no better suited forum or district to render justice in the present dispute;

WHEREFORE, PLAINTIFFS PRAY THIS HONOURABLE COURT TO:

GRANT the present Motion;

AUTHORIZE the institution of a class action as follows:

ATTRIBUTE to Plaintiffs the status of Representatives for the purpose of bringing the class action for the benefit of the following class of natural persons, namely:

All persons who reside in any part of the Province of Quebec, as well as flora, fauna, who suffered moral, physical, and/or psychological damages as a result of unnecessary flooding due to improper decisions made by the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève. Given the pervasive, escalating and cumulative effects of flooding and related pollution, their intentionally denying Charter rights and the bad faith of those decisions, punitive damages are equally due to the elderly, disabled, the dispossessed, flora and fauna.

IDENTIFY as follows the principal questions of fact and of law to be treated collectively in the class action proceedings:

- A. The inconvenience, discomfort, stress, economic and health problems that were suffered by each of the members of the class were caused by/or created as a result of flooding and resulting pollution;
- B. Presumptive evidence of causality i.e. that given the “serious, precise and concordant” facts alleged, this Honourable Court is entirely justified in coming to a presumption of fact that the damages claimed herein are a results of Defendants’ actions and omissions;
- C. The flooding and resulting pollution contravene sections 1(5) 19.1, 20, 90, 91, 92 and 94 and following of *The Environmental Quality Act* (“the *E.Q.A.*”);

- D. Whether the pollutants described herein contravene art. 20 in fine E.Q.A. since they “porte atteinte au confort de l’être humain”;
- E. The pollutants resulting from flooding constitute “contaminants” within the meaning of Art. 1(5) of the E.Q.A. and further contravene Arts. 6.01, 7.01, 7.02, 7.04, 7.05, 7.06, 7.08, 7.09 and must be statutorily recognized as such;
- F. The flooding and resulting pollution constitute a nuisance within the meaning of Article 976 C.C.Q. as they exceed that which is reasonable and tolerable in a residential environment;
- G. The flooding and resulting pollution constitute an abuse of right within the meaning of Articles 6 and 7 C.C.Q. as exercised in bad faith, with the intent to injure another or exercised unreasonably;
- H. Whether the pollution resulting from the flooding constitutes a neighbourhood annoyance beyond normal levels such as to trigger the provision of Art. 976 the *Quebec Civil Code* and, additionally if that pollution constitutes a fault, were they intentional and whether the governmental Defendants were complicit therein, such that punitive, exemplary and treble damages are warranted pursuant to *Ciment du St. Laurent Inc. vs. Barrette* [2008] 3 S.C.R. 392 and, as concerns exemplary damages, against governments, *Hinse vs. Canada* [2015] S.C.C. 35, art. 1457 C.C.Q. and s. 49 of the *Quebec Charter* as well as L. Perret “*De l’impact de la charte des droits et libertés de la personne sur le droit civil des contrats et de la responsabilité*” (1981), 12 R.D.J. 121 at page 170. Plaintiffs claim that all involuntary exposure should be compensated by treble damages as set out in the Ford Pinto line of jurisprudence;
- I. Whether, even if 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 as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas* and *Ciment St-Laurent*;
- J. The right of the Plaintiffs and each member of the class to claim damages, as well as moral, exemplary and Charter damages, from the Defendants;
- K. Whether Defendants are jointly and severally liable (or liable in solidum) for the damages caused to Plaintiffs and the members of the class;
- L. Whether Defendants were at fault in not taking sufficient measures to assure the pollution resulting from the flooding did not create nuisance, exceed a safe level, or constitute an abuse of right, and whether their actions in this regard were intentional and/or fraudulent;

M. Whether, having knowledge of the nuisance and/or abuse of right, Defendants were at fault in not acting in a timely manner to curtail the flooding and pollution alleged;

N. Whether Plaintiffs may claim on behalf of affected fauna; and more specifically whether the displaced or harmed fauna must be returned in the same numbers and to the same locations and in a safe environment by the Defendants pursuant to the rule in the Washington state Pacific Northwest decisions of Mr. Justice George Boldt and *Plantons A. et P. inc. c. Delage*, 2015 QCCA 7;

O. Whether the awarding of treble damages is justified in the circumstances;

P. Whether the class should be defined as:

All persons who reside in any part of the Province of Quebec, as well as flora, fauna, who suffered moral, physical, and/or psychological damages as a result of unnecessary flooding due to improper flood protection decisions made by the Mayor and Borough of L'Île-Bizard–Sainte-Geneviève. Given the pervasive, escalating and cumulative effects of flooding and related pollution, their intentionally denying *Charter* rights and the bad faith of those decisions, punitive damages are equally due to the elderly, disabled, the dispossessed, flora and fauna.

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

DECLARE that all Defendants have contravened Articles 19.1 and 20 of the *Environment Quality Act*;

DECLARE that all Defendants have contravened Articles 1, 5, 6, 7, 8, 46.1 and 48 of the *Charter of Human Rights and Freedoms*;

ORDER the Defendants to pay damages to property moral and punitive damages;

ORDER the collective recovery of said damages; and

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 law;

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

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

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 and designate the Judge before whom it will be heard;

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

THE WHOLE with costs.

MONTREAL, this 24day ofMay, 2019

CHARLES O'BRIEN
Attorney for Plaintiffs