

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

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No: 500-06-001089-206

Pascal Monaco,  
domiciled at 8703 avenue d’Allonnes, Anjou, QC,  
H1J 1W8

Sofiya Marunych  
domiciled at 9125 de Belmont, Saint-Léonard, QC,  
H1P 2H1

and  
Franca Bucaro  
domiciled at 9059 rue de Belmont, Saint-Léonard,  
QC, H1P 2H1

Applicants

-vs-

The Mayor of Saint-Léonard, Michel Bissonet,  
borough office at 8400 Boulevard Lacordaire, Saint-  
Léonard, QC, H1R 3B1

The Town of Saint-Léonard, a duly constituted legal  
person having its headquarters at 8400, boulevard  
Lacordaire, Saint-Léonard, Quebec, H1R 3B1

and 9 (“the City”), a duly constituted legal person  
having its headquarters at 275 rue Notre-Dame Est,  
Montreal, Quebec, H2Y 1C6

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVES and  
INJUNCTION TO CORRECT AND MAINTAIN INFRASTRUCTURE**

(Articles 509 ff and 571 ff., C.C.P.)

## **APPLICANTS RESPECTFULLY SUBMITS:**

1. Applicants Franca Bucaro, Pascal Monaco (representative for the sub-class of property owners) and Sofiya Marunych (representative for the sub-class of tenants) wish to institute a class action on behalf of the natural persons forming part of this class, of which the Applicants are members:

All persons who have owned or rented property in Saint-Léonard, Quebec, who suffered moral, physical, and/or psychological and/or property damages as a result of ongoing and unnecessary flooding due to negligence of action made by the Mayor and Municipality of Saint-Léonard. Given the pervasive, escalating and cumulative effects of flooding and related damages, their intentionally denying *Charter* rights and the bad faith of those decisions, punitive damages are equally due to the elderly, and disabled.

2. The class described in paragraph 1 is composed of the following sub-classes:
  - A. Persons who have rented property in Saint-Léonard, Quebec since August 10, 2017;
  - B. Persons who have owned property in Saint-Léonard, Quebec since August 10, 2017;
  - C. Persons who have rented property in Saint-Léonard, Quebec from 1982 to August 9, 2017;
  - D. Persons who have owned property in Saint-Léonard, Quebec from 1982 to August 9, 2017.
3. On 24 July 2020, a letter notifying the City of Montreal of the flooding issue was sent to the City of Montreal from Lorax Litigation. The letter is produced herewith as **Exhibit R-7**. It details the essentials of the issue and informed the City of the Applicants' intention to institute a class action should the situation not be resolved, or compensation not be paid.

## **FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY THE APPLICANTS**

4. The facts on which the Applicants' personal claims against the Defendants are based are:
  - A. There have been repeated flooding problems in the Borough of Saint-Léonard located on the island of Montreal south-east of Montreal-Nord, south-west of Anjou, north-west of Nouveau-Rosement, north-east of Villeray Saint-Michel. These repeated events have taken place for several decades, most recently:
    - a. February 2, 1983
    - b. June 18, 1984
    - c. June 8, 1987
    - d. July 14, 1987
    - e. November 8-9, 1996

- f. July 11, 2009
  - g. May 29, 2012 (See “Climate Change Adaptation Plan 2015-2020 produced as Exhibit R-10
  - h. August 13, 2013,
  - i. July 21 and 25 and August 8, 2018,
  - j. July 21, October 1, 2019.
- B. Pascal Monaco has encountered many elderly people living in the area who express feelings of being abandoned by the city. Some of them have not left their homes for any lengthy period of time for decades because they fear they may return to a flooded home. A large number of elderly people in the area who have purchased their homes and paid off their mortgages are now unable to sell their homes in order to enjoy their retirement. Many elderly in the area do not have adequate savings for their retirement having expected to sell their primary asset, their home, after retiring, and they now cannot do so because they are perceived as being in a flood area.
- C. Pascal Monaco has encountered many elderly living in the area who express feelings of anger and sorrow that the Mayor and Borough of Saint-Léonard has not taken any significant action to protect them from the increasing frequency of flood problems caused by global warming and insufficient storm drains and catchments in the area. That many of these elderly members experience extreme anxiety every time there is a heavy rain in fear that it will lead to a flooding event. Furthermore, the Mayor intentionally mislead residents as to the cause of such flooding, claiming it was from “natural causes”.
- D. All of the class members are neighbors within the meaning of Art. 976 C.C.Q. and have suffered unreasonable neighbourhood annoyance.
- E. The Defendants have control over flooding and were negligent in not stopping or curtailing the flooding alleged herein;
- a. Class members suffer from the cumulative effects of flooding produced and emitted by all Defendants including the willful blindness, gross negligence, failure to protect citizens’ fundamental rights and failure to provide and maintain proper drainage system infrastructure, Defendants having contravened Articles 19.1 and 20 of the *Environment Quality Act* c Q-2
- F. The 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;
- G. In particular, Defendants have acted intentionally, wilfully, negligently in their failure to recognize and protect citizens from the cumulative effects of flooding;
- H. The Defendants, well aware of the risks of flooding, have intentionally, wilfully, negligently and in concert with the other Defendants, failed to protect citizens from the

deleterious cumulative effects of flooding, in particular as concerns the elderly and the disabled.

- I. On the 21<sup>st</sup> of June, 2020, Applicants learned that the issues similar to those addressed in the this application were addressed in *Emidio Panzuto et al. -vs- Ville de Saint-Léonard*. C.S.M. 500-05-001615-820 and that the resulting *agreed* work was not completed.
- J. The Defendants were aware of the insufficiencies of the drainage system and passed resolutions to improve the system which were never implemented. The resolutions are produced herewith as **Exhibit R-6**.
- K. These resolutions were motivated by the settlement of *Emidio Panzuto et al. -vs- Ville de Saint-Léonard*. C.S.M. 500-05-001615-820, as indicated in a letter from Raymond Tremblay to Me. Abraham Segal, which accompanies the resolutions produced herewith as **Exhibit R-6**. The City of Saint-Léonard understood itself to be obligated to make the urgent and necessary reparations to the sewer system.
- L. These improvements entailed are listed in **Exhibit R-6 as follows**:
  - a. Installing a back-flow preventor at the Couture outlet near Langeleir
  - b. Installing a back-flow preventor on the sewer at rue Couture East of Le Royer
  - c. Constructing basins of 1500ft long by 20ft wide by 3.5ft deep at:
    - “-Rue couture: de la Royer à environ 700 pieds vers l’ouest
    - Rue de Belmont: de Couture à environ 400 pieds versle sud
    - Rue Mériel: de De Belmont à 100 pieds vers ‘ouest
    - Rue Perthuis: de De Belmont à la rue Chenet (200pieds environ)
    - Rue Chenet: de Perthuis à 100 pieds vers le sud.”
- M. The Cité did not implement the resolutions and in so doing knowingly failed to comply with the agreement of *Emidio Panzuto et al. -vs- Ville de Saint-Léonard* C.S.M. 500-05-001615-820. The Defendant’s fraud thus extends the prescription period *ad infinitum*.
- N. The Defendants’ liability for things in their custody under arts. 1457 and 1465 CCQ extends to drainage systems, and the Defendants are consequently strictly liable for the injury caused by the flooding which resulted from the insufficiency of the drainage system;
- O. The failure to implement the improvements mentioned in I, above, which were recognized as urgent, was negligent and allowed for further flood damage after 1982, as found by an evaluation by Rene Seguin & Associes Experts Conseils INC., produced herewith as **Exhibit R-5**.
- P. Work completed added extra grates, yet these failed to resolve the insufficiency since they lead to small pipes and an insufficient basin.

- Q. The 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 for which reparation is due;
  - R. The class members are entirely justified in having the damages immediately curtailed. The injunctive relief set out herein is warranted, in the public interest, and in the interest of future generations, for the damage alleged herein is, for the most part, impossible to reverse and becomes worse over time;
  - S. 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;
  - T. The Defendants intentionally failed to protect and breached the *Charter* rights of the elderly and the disabled for which exemplary and punitive damages should be awarded (see Exhibit R-10 at page 15);
  - U. Repeated flooding events have frequently resulted in mould issues in almost all (~90%) of the affected residences and rising humidity and dampness can cause mould to migrate within structures to higher levels and cause air contamination if left unresolved. Mould is a clear and present health danger to inhabitants of these structures and the cost of mitigating it should be borne by the Defendants due to their negligence;
  - V. *The class members have received no prior compensation from the municipality for flood damage, so their right of action is not negated by S585 (8) of the Cities and Towns Act;*
  - W. The City of Saint-Leonard intended to create a park above the affected area, yet instead allowed substantial development, including a large condo, yet did not adjust the drainage system to match the new developments. (Art. 979 C.C.Q.)
  - X. The City of Saint-Leonard allowed commercial development to happen on property which was raised in elevation without ensuring adequate catchment systems or drainage resulting in increased flooding in the neighboring residential areas.
  - Y. The City of Saint-Léonard is acknowledges the increased insurance premiums and difficulty in getting insurance for flooding for residents and sent a form that residents could complete to receive compensation from the city (Exhibit). No compensation was ever paid by the City.
  - Z. Another area of Saint-Leonard faced similar flooding issues and work was done there to remedy the situation. (need more details)
5. The facts giving rise to the personal claim of Pascal Monaco are, in addition to those in subparagraphs 3.A to 3.N, as follows:

- A. Pascal Monaco owns property in the affected area which has flooded twice in 2019.
  - B. The flooding caused prejudice to Pascal Monaco's property.
    - C. He was under insured and had to pay for repeated flood damage partly.
    - D. He was not insured for a motorcycle which was destroyed in the flooding.
    - E. He has not been able to rent his lower unit due to flood damage resulting in lost rental income.
    - F. He has had extreme stress due to repeated flooding events and is fearful every time it rains.
    - G. His stress has likely contributed to or exacerbated various medical problems he is currently being treated for.
    - H. Due to this stress he wishes to sell his property but is unable to due to being in a flood prone area.
6. The facts giving rise to the personal claim of Sofiya Marunych are, in addition to those in subparagraphs 3.A to 3.N, as follows:
- A. Sofiya Marunych has been a tenant in the affected area from November 2000 to July 2020.
  - B. She has experienced flooding every year and sometimes multiple times in a year.
  - C. Her property has been damaged by the flooding.
  - D. She has invested in pumps and flaps to prevent flooding with limited effect.
  - E. She has contacted the City of Saint-Léonard each time and received no support save inspectors who come and assess the situation and take photos.
  - F. During the instances of flooding, water enters not only from the street but also from the sewers through the drains in the basement including though the toilet, shower drain, and sink.
  - G. The water has damaged her property and caused her stress and anxiety and limited her ability to leave because she must be there in case it floods.
  - H. She has been woken early in the morning by her mother, who lived below her, needing her to come assist with the severe flooding in the basement.
  - I. She has witnessed the stress the flooding has placed on her parents and neighbors, especially those who are elderly.
  - J. She has signed petitions and brought the problem to the attention of the city repeatedly and received no concrete response.
  - K. She has faced increased insurance as a result of the flooding.
- She believes the city is aware of the problem and does not resolve it not out of a lack of funds but rather because it was easier to allow the problem to persist than to work to solve it;
7. The facts giving rise to the personal claim of Franca Bucaro are, in addition to those in subparagraphs 3.A to 3.N, as follows:
- A. Franca Bucaro owns property in the affected area.

- B. She has experienced several flooding events to her home;
  - C. She has experienced material losses due to flooding events;
  - D. She has experienced monetary losses due to flooding events;
  - E. She has experienced mould problems in her home due to flooding events;
  - F. She has experienced insurance problems as a result of flooding events;
  - G. She has experienced anxiety problems and loss of sleep due to the stress of being at risk of future flooding events;
  - H. She suffers physical problems in the form of a chronic cough possibly due to mould exposure in her flood damaged home;
8. The sub-class of owners in particular have faced, in addition to the facts alleged in 4.A to 4.Y, damage to property, and added difficulty in finding tenants, and decreased value of their rental properties and, therefore, loss of income.
9. The sub-class of tenants in particular have faced, in addition to the facts alleged in 4.A to 4.Y, loss of enjoyment of property.

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

10. The facts giving rise to personal claims by each of the members of the class against the Defendants are the same as those which justify the Applicant's individual recourse, as is made evident through the following documents:
- A. A copy of a petition to institute a Class Action against the Mayor and the City, dated starting on July 5, 2020 and circulated by Pascal Monaco, signed by approximately 100 City residents filed by Applicant Pascal Monaco is produced herewith as **Exhibit R-1**.
  - B. A collection of pictures taken by Pascal Monaco during repeated flooding events in Saint-Léonard is produced herewith as **Exhibit R-2**.
  - C. A collection of videos taken by various news agencies during Repeated flooding events in Saint-Léonard is produced herewith as **Exhibit R-3**.
  - D. A collection of news articles from multiple news agencies is produced herewith as **Exhibit R-4**.
  - E. A 1989 evaluation of the drainage system of Saint-Léonard, from by Rene Seguin & Associes Experts Conseils INC, which details the insufficiencies of the system, is produced herewith as **Exhibit R-5**.
  - F. A resolution from 1982 for specific improvements to the drainage system of Saint-Léonard, which was unanimously adopted by the municipal council of Saint-Léonard, is produced herewith as **Exhibit R-6**.

- G. The notice of the flooding issue sent to the City of Montreal of Friday, 24 July 2020, is produced herewith as **Exhibit R-7**.
- H. A presentation from 23 October 2019, designed to inform citizens of the state of the drainage system, obtained by Pascal Monaco, is produced herewith as **Exhibit R-8**.
- I. The March 17, 1982 decision of the Honorable Mr. Justice Jean Guy Vaugeois in *Emidio Panzuto et al. -vs- Ville de Saint-Léonard*. C.S.M. 500-05-001615-820 giving the City of St. Leonard ninety (90) days to comply with that decision, plumitive (entry 7 March 17 1982) is produced herewith as **Exhibit R-9**.

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

- 11. The identical, similar or related questions of law or fact between each member of the class and the Defendants which Applicant wish to have decided by the class action are:
  - A. *Whether* the inconvenience, discomfort, 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;
  - B. *Whether* the flooding contravenes sections 1(5), 19.1, 20, 90, 91, 92 and 94 and following of *The Environmental Quality Act* (“the *E.Q.A.*”);
  - C. Whether the troublesome flooding and pollution described herein contravene art. 20 *in fine E.Q.A.* since they “porte atteinte au confort de l’être humain”;
  - D. Whether 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;
  - E. 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;
  - F. 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;
  - G. 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. Applicant claims that all involuntary exposure to harm should be compensated by treble damages as set out in the Ford Pinto line of jurisprudence;

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 therefor.) *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 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 SCC 35 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.)

H. Whether the drainage system of Saint-Léonard is a “thing” under the custody of the City of Montreal and borough of Saint-Léonard under arts 1457 and 1465 CCQ, and whether the defendants are consequently strictly liable for the acts of the drainage system;

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. Whether the Applicant and each member of the class *has a right* to claim damages, including 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 the members of the class;

- L. 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;
- 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 alleged;
- N. 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 the breach of class members' fundamental rights;
- O. Whether the awarding of treble damages is justified in the circumstances;

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

12. 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, at least three thousand [3,000], 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. 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;
  - 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;

- E. Moreover, due to the significant experts' costs associated with the litigation of this matter, it is in the best interests of each of the members of the Class, and of justice, that the institution of a class action be authorized.

### CONCLUSIONS SOUGHT

13. The conclusions sought by the Applicant are:

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

**ORDER** the Defendants to take, within 6 months, all measures necessary to ensure that further flooding of this nature does not occur;

**CONDEMN** the Defendants solidarily to pay to owners \$15,000 for the first instance of flooding, \$30,000 for the second instance and \$45,000 for the third instance, for damage to property; all in excess of any payouts received from insurance or government support;

**CONDEMN** the Defendants solidarily to pay to owners \$7,000 for the first instance of flooding, \$15,000 for the second instance and \$22,000 for the third instance for loss of insurance or increased insurance premiums;

**CONDEMN** the Defendants to remediate at their expense all mould damage to residences in the identified zone;

**CONDEMN** the Defendants solidarily to pay to tenants \$10,000 for each year of flooding to compensate for the loss of enjoyment of property;

**CONDEMN** the Defendants solidarily to pay all elderly and disabled class members \$13,000 for the breach of their *Charter* rights;

**CONDEMN** the Defendants solidarily to pay each class member \$25,000 for moral damages including stress and inconvenience;

**ORDER** the collective recovery of said damages; and

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

**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.

**THE CLASS MEMBERS APPOINTED AS REPRESENTATIVE PLAINTIFF'S ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS (ART 575 (4))**

14. The Applicant Pascal Monaco requests that he be ascribed the status of Representative.
15. The Applicant Pascal Monaco is in a position to represent the members adequately, for the following reasons:
  - A. He lives in a neighbourhood directly affected by the flooding and resulting pollution described herein and has been a victim of the flooding and resulting pollution in Saint-Léonard
  - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the flooding and is informed on the impacts and consequences of this activity as it affected those in the neighbourhoods identified under the description of class presented above;
  - C. He went door to door for three days collecting signatures and discussing in great detail the flooding with about 100 class members;
  - D. He gathered the names, addresses and phone numbers of persons who have been affected by flooding and resulting pollution (Exhibit R-1) and also gathered information on the nature of the various harm and inconvenience suffered by those persons;
  - E. He possesses all the personal, moral and intellectual qualities to see this class action through to its final resolution and will act for the benefit of the members of the class.
  - F. He has acquainted himself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
16. The Applicant Sofiya Marunych requests that she be ascribed the status of Representative.
17. The Applicant Sofiya Marunych is in a position to represent the members of the class who are tenants adequately, for the following reasons:
  - A. She has been a tenant in the borough of Saint-Léonard for almost 20 years from around November, 2000 to July, 2020;
  - B. She has been directly affected by the flooding;

- C. She has acquainted herself with the concerns of the class members and has been vocal in her attempts to bring the situation to the attention of the municipality through petitions, phone calls and a meeting with the mayor;
  - D. She has spoken to many of the affected areas residents and knows of the extent of flooding they have suffered and of their attempts to mitigate the harm;
  - E. She speaks French and Italian and is therefore well placed to communicate with class members;
  - F. She has witnessed the impact of the flooding on other class members, including the anxiety and stress and fear, particularly on the elderly and disabled;
  - G. She has experienced difficulties with insurance because of the flooding and knows of the difficulties other class members have faced, especially those who have lived in the area for many years;
  - H. She has no conflict of interest with the other representative plaintiffs;
18. The Applicant Franca Bucaro requests that she be ascribed the status of Representative.
19. The Applicant Franca Bucaro is in a position to represent the members of the class adequately, for the following reasons:
- A. Franca as a Resident of long standing who speaks 3 languages fluently;
  - B. She lives in a neighbourhood directly affected by the flooding and has owned a home there since June of 1996 and has been a victim of the flooding and resulting pollution in Saint- Léonard;
  - C. She 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. She has acquainted herself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
  - E. She has experienced several flooding events to her home;
  - F. She has experienced material losses due to flooding events;
  - G. She has experienced monetary losses due to flooding events;
  - H. She has experienced mould problems in her home due to flooding events;
  - I. She has experienced insurance problems as a result of flooding events;
  - J. She has experienced anxiety problems and loss of sleep due to the stress of being at risk of future flooding events;
  - K. She suffers physical problems in the form of a chronic cough possibly due to mould exposure in her flood damaged home;
  - L. As a mortgage product manager she is an expert in the difficulties of selling homes in this area or the problems for future buyers in getting mortgages in this area;

20. The Applicant requests that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
- A. The Defendants allowed flooding and resulting pollution in Saint-Léonard, Quebec;
  - B. The flooding complained of that caused the harms suffered by Applicant and the other class members was carried out in the Province of Québec;
  - C. Applicant 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, APPLICANT PRAY THIS HONOURABLE COURT TO:**

**GRANT** the present Motion;

**AUTHORIZE** the institution of a class action as follows:

**ATTRIBUTE** to Pascal Monaco, Sofiya Marunych and Franca Bucaro the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class of natural persons, namely:

All persons who have owned or rented property in Saint-Léonard, Quebec, who suffered moral, physical, and/or psychological damages as a result of ongoing and unnecessary flooding due to negligence of action made by the Mayor and Municipality of Saint-Léonard. Given the pervasive, escalating and cumulative effects of flooding and related damages, their intentionally denying Charter rights and the bad faith of those decisions, punitive damages are equally due to the elderly, and disabled.

**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;
- B. Presumptive evidence of causality that given the “serious, precise and concordant” facts alleged this Honourable Court is justified in coming to a presumption of fact that the flooding is a result of improper/insufficient drainage system and a failure to properly maintain it;
- C. 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;

- D. The flooding constitutes 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;
- a. 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. Applicant claims that all involuntary exposure should be compensated by treble damages as set out in the Ford Pinto line of jurisprudence;
- E. 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*;
- F. Whether the Defendants are strictly liable for the failure of the drainage system as the act of thing under their custody in accordance with arts 1457 and 1465 CCQ;
- G. The right of the Applicant and each member of the class to claim damages, as well as moral, exemplary and Charter damages, from the Defendants;
- H. Whether Defendants are jointly and severally liable (or liable in solidum) for the damages caused to Applicant and the members of the class;
- I. 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 alleged;
- J. Whether the awarding of treble damages is justified;
- K. Whether the class should be defined as:

All persons who have owned or rented property in in Saint-Léonard, Quebec, who suffered moral, physical, and/or psychological damages as a result of unnecessary flooding due to improper decisions made by the Mayor and Municipality of Saint-Léonard. Given the pervasive, escalating and cumulative effects of flooding, their intentionally denying Charter rights and the bad faith of those decisions, punitive damages are equally due to the elderly and disabled.

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

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

**ORDER** the Defendants to take, within 6 months, all measures necessary to ensure that further flooding of this nature does not occur;

**CONDEMN** the Defendants solidarily to pay to owners \$15,000 for the first instance of flooding, \$30,000 for the second instance and \$45,000 for the third instance, for damage to property; all in excess of any payouts received from insurance or government support;

**CONDEMN** the Defendants solidarily to pay to owners \$7,000 for the first instance of flooding, \$15,000 for the second instance and \$22,000 for the third instance for loss of insurance or increased insurance premiums;

**CONDEMN** Defendants to remediate at their expense all mould damage to residences in the identified zone;

**CONDEMN** the Defendants solidarily to pay to tenants \$10,000 for each year of flooding to compensate for the loss of enjoyment of property;

**CONDEMN** the Defendants solidarily to pay all elderly and disabled class members \$13,000 for the breach of their Charter rights;

**CONDEMN** the Defendants solidarily to pay each class member \$25,000 for moral damages including stress and inconvenience;

**ORDER** the collective recovery of said damages; and

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

**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 the Le Journal de Montréal, The Montreal Gazette, and Bloomberg Business Week 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 10<sup>th</sup> day of August, 2020

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CHARLES O'BRIEN  
Lorax Litigation for Monaco, Bucaro and Marunych

**SUMMONS**  
(articles 145 and following C.C.P.)

**Filing of a judicial application**

**TAKE NOTICE** that the Petitioner has filed this application in the office of the Superior Court of the judicial district of Montreal.

**Defendant's Answer**

To file an answer to this application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 15 days of service of this motion. The answer must be notified to Lorax Litigations.

**Failure to Answer**

If you fail to file an appearance within the time limit of 15 days, a judgment by default may be rendered against you without further notice and you may, according to circumstances, be required to pay the legal costs.

**Content of Answer**

In your answer, you must state your intention to:

- Negotiate a settlement;
- Propose mediation to resolve the dispute;
- Defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons
- Propose a settlement conference.

If you file an appearance, the application will be presented before the Court **on a date and in a room to be determined** by the Court. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding, unless you make a written agreement with the Plaintiffs in Warranty's advocate on a timetable for the orderly progress of the proceeding.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

### **Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff. If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Re-Amended Motion Seeking Authorization, Petitioners allege the following Exhibits, referred to in the links or available on request: (*provided on the attached USB key*)

**Exhibit R-1:** A petition to institute a Class Action against the Mayor and the City.

**Exhibit R-2:** Picture taken by Pascal Monaco documenting flooding in Saint-Léonard.

**Exhibit R-3:** Videos taken by Pascal Monaco documenting flooding in Saint-Léonard.

**Exhibit R-4:** News articles regarding flooding in Quebec and Saint-Léonard;  
Exhibit R-4 (i): CTV News, Kilometres away from waterfront, St-Leonard residents say flooding a recurring issue, 21 July 2019; <https://montreal.ctvnews.ca/kilometres-away-from-waterfront-st-leonard-residents-say-flooding-a-recurring-issue-1.4517474>;

**Exhibit R-4 (ii):** Global News, Much needed Saint-Leonard flood relief drowning in bureaucratic blame game, 2 October 2019; <https://globalnews.ca/news/5980712/saint-leonard-flood-problem/>;

**Exhibit R-4 (iii):** CBC News, Saint-Léonard residents, fed up with flooding, want city to renovate sewer system, 11 September 2019; <https://www.cbc.ca/news/canada/montreal/saint-leonard-homes-flooding-1.5278897>;

**Exhibit R-5:** Rene Seguin & Associes Experts Conseils INC, “*Henriette Harvey et al vs Ville De Saint-Léonard, Cas de refoulements d’égouts,*” 20 April 1989;

**Exhibit R-6:** Resolutions of the City of Saint-Léonard, “Travaux pour éliminer les eaux de ruissellement du parc Coubertin et de la rue provence,” et “Travaux reseau d’égout secteur de Belmont/couture,” 14 June 1982;

**Exhibit R-7:** Notice sent to the City in advance of instituting a class action, “Notice of flooding issue,” 24 July 2020

**Exhibit R-8:** Presentation on sewers and flooding obtained by Pascal Monaco, “SÉANCE D’INFORMATION AUX CITOYENS DE L’ARRONDISSEMENT DE SAINT-LÉONARD,” 23 October 2019;

**Exhibit R-9:** Plumitive of March 17, 1982 decision of the Honorable Mr. Justice Jean Guy Vaugois in *Emidio Panzuto et al. -vs- Ville de Saint-Léonard*. C.S.M. 500-05-001615-820;

**Exhibit R-10:** City of Montreal Climate change Adaptation Plan for the Agglomeration of Montreal (2015-2020).

Montreal, Quebec, this 10<sup>th</sup> day of August 2020.

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Charles O’Brien  
Lorax Litigation for Petitioner