

The Agreement was drafted in French between the parties. The English version is an unofficial translation of the French version. In the event of any discrepancy between the versions, the French version shall prevail.

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

NO.: 500-06-000480-091

S U P E R I O U R C O U R T

(Class Action)

**ROSEMONT FLOODED CITIZENS'
COMMITTEE**

Plaintiff

and

EUGÈNE ROBITAILLE

Designated Member

v.

VILLE DE MONTRÉAL

Defendant

SETTLEMENT AGREEMENT (UNOFFICIAL TRANSLATION)

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I. PREAMBLE

1. **WHEREAS** on February 22, 2011 and April 26, 2012, the Superior Court granted authorization for the Rosemont Flooded Citizens' Committee and Eugène Robitaille to institute a class action;
2. **WHEREAS** the plaintiff filed an *Application for Authorization to Institute a Class Action* on November 7, 2011, which was last modified on February 19, 2019;
3. **WHEREAS** the defendant filed its Defence on July 10, 2013, which was last modified on May 17, 2019;
4. **WHEREAS** since the institution of the proceedings in connection with this class action, the defendant has carried out certain work on its sewage facilities serving the block in question to improve service, in addition to other revegetation work to reduce the amount of surface water, and will continue to introduce greening measures to encourage sustainable rainwater management;
5. **WHEREAS** after analyzing the facts and the law applicable to the Class Members' claims, the expertise sought in connection with the Dispute, the risks, the amount of time involved and the considerable costs associated with litigation, this Agreement confers appropriate benefits to Class Members;
6. **WHEREAS** the Parties would hereby like to resolve all claims that could be presented by the Class Members based on the facts being alleged in the Application;
7. **WHEREAS** the Agreement has been reached with no admission from the Parties, who are consenting to it for the sole purpose of reaching an out-of-court settlement for the Dispute.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

II. INTERPRETATION

8. The preamble is included in, and forms an integral part of, this Agreement.
9. In the Agreement, the singular includes the plural, and vice versa.
10. The Agreement constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Québec*.

III. DEFINITIONS

11. The following definitions, in alphabetical order, apply to this Agreement:
 - **Administrator:** The claims Administrator to be appointed by the Court for the purpose of implementing the Protocol;
 - **Agreement:** This *Settlement Agreement* as well as the Protocol;
 - **Amounts withheld:** Legal fees as will be approved by the Court and/or amounts to be paid to the *Fonds d'aide aux actions collectives* in accordance with the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* (F-3.2.0.1.1, r.2) on the individual recovery of material and moral damages;
 - **Application:** The *Originating application in a class action* dated November 7, 2011, which was last modified on February 19, 2019;
 - **Claimant:** The Members, their legal representatives or their estate;
 - **Defence:** The *Defence* filed on July 10, 2013, which was last modified on February 19, 2019;
 - **Demineralization work:** removal of concrete, slabs or asphalt from private properties to reintroduce vegetation or install environmentally friendly paving stones/open honeycomb paving blocks allowing for better absorption of rainwater;
 - **Dispute:** The Application, Defence, supporting exhibits, expert reports and any other related procedure;
 - **Event:** Surface water infiltration and sewer back-ups that occurred on July 11, 2009 or July 26, 2009, on July 18, 2011 or on August 21, 2011;

- **Habitable:** Space arranged as a living area or to sustainably go about activities;
- **Members or Class Members:** Any natural or legal person (with fewer than 50 employees during the 12 months preceding this class action), owners, lessees or sublessees of real property located in the block bounded by De Bordeaux Street, 1st Avenue, Saint-Zotique and Bélanger streets, that had surface flooding or a sewer back-up flooding on July 11 or 26, 2009, on July 18, 2011 or on August 21, 2011;
- **Parties:** The plaintiff and the defendant in this class action;
- **Plumbing appliance or Appliance:** Plumbing fixtures or appliances connected to fittings, e.g. a toilet, shower, sink, washing machine or floor drain;
- **Protocol:** *Protocol Governing the Liquidation of Individual Claims* (Appendix A);
- **Sewer back-up flooding:** Water flowing back into a building through plumbing fixtures or appliances connected to fittings, such as a toilet, shower, sink, washing machine or floor drain;
- **Surface flooding:** Water flowing from exterior surfaces and seeping into a building through a window well, areaway, depressional area or any other opening, other than cracks or fissures to the building's foundation or understructure;
- **Uninhabitable:** Unfinished space or space primarily for washing or storage, such as a basement, crawl space or cement or concrete slab.

IV. FINANCIAL COMPENSATION FOR MEMBERS

A- Compensated damages

12. To obtain material or moral damages, one of the following situations must apply to a Claimant:

12.1. The building in question was constructed before April 28, 1939 (date indicated in the Ville de Montréal Charter) and the flood damage was caused by a sewer back-up in the building's basement.

12.2. The building in question had water infiltration due to surface flooding.

- 12.3. The building in question was flooded due to a sewer back-up on the main floor or upper floors.
- 12.4. The building in question was flooded due to a sewer back-up in the basement, in spite of a backwater valve (or backwater valves) being installed on the plumbing line protecting Appliances below street level.
13. For cases referred to in paragraph 12.1, in the event that the date of construction is only known to be in 1939, it will be deemed to be prior to April 28, 1939.
14. For cases referred to in paragraph 12.2, Apportionment of responsibility could be established if there was also flooding due to a sewer back-up in the basement of the same building. In such cases, 75% of the damages will be deemed to have been caused by surface flooding, with the remaining 25% being deemed to be the result of the sewer back-up in the building's basement.
15. For cases referred to in paragraph 12.4, if the building had partial protection of its plumbing Appliances, apportionment of responsibility will be established based on the number of Appliances affected by the back-up that were or were not protected.

Hence:

-If none of the Appliances affected by the back-up were protected by an individual or main backwater valve, the Member will be fully responsible for damages, unless one of the other three situations in paragraphs 12.1 to 12.3 also applies.

-If 1 of the 2 Appliances affected by the sewer back-up in the basement was protected by an individual or main backwater valve, responsibility for damages will be shared equally (i.e. 50% each) between the defendant and the Member.

-If 3 of the 4 Appliances affected by the sewer back-up in the basement were protected by an individual or main backwater valve, responsibility for damages will be shared as follows: 75% for the defendant and 25% for the Member.

- If all of the Appliances affected by the sewer back-up in the building's basement were protected by an individual or main backwater valve, the defendant will assume the full cost of damages.

16. For cases referred to in paragraph 12.4, the defendant waives its right to request proof of maintenance of said backwater valves for the sole purpose of reaching a settlement and to allow for a more efficient claims process.
17. To receive the amounts of the compensated damages, Claimants must meet the conditions specified in the Protocol.
18. The damages referred to in this section will be recovered individually.

1 – Material damages

19. Material damages refer to all damages caused to the building or building contents.
20. Compensation will be provided for material damages by way of a lump sum payment, with no need to provide proof of the damages incurred, as follows:
 - 20.1. An amount of \$1,000 per address that was flooded during one of the two Events that occurred in 2009 or an amount of \$1,500 per address that was flooded during both Events that occurred in 2009;
 - 20.2. An amount of \$1,000 per address that was flooded during one of the two Events that occurred in 2011 or an amount of \$1,500 per address that was flooded during both Events that occurred in 2011.
21. In the event that a claim is filed for the same address by both the owner(s) and the lessee (s), each of them will be eligible to receive the afore-mentioned amounts.
22. Members who do not wish to avail themselves of this lump sum payment, preferring instead to claim higher material damages, will be required to provide evidence for the amounts being claimed and submit supporting documents that will be analyzed according to the rules of evidence determined by the parties in the Protocol.

2 – Moral damages

23. Moral damages refer to stress, inconvenience and lost time endured by Members as a result of the Events in question.
24. Compensation will be provided for moral damages by way of a lump sum payment, with no need to provide proof of the damages incurred, as follows:
 - \$3,000 per owner and co-owner, for each Event, if the flooded portions of the building were Habitable;
 - \$1,500 per owner and co-owner, for each Event, if the flooded basement is Uninhabitable;
 - \$1,500 per lessee of the damaged premises, who is bound by lease, per Event;
 - \$1,000 for any person occupying the damaged premises, with proof of occupancy, per Event.

B- Interest and additional compensation

25. All amounts granted in respect of material and moral damages will bear interest and be subject to additional indemnity in accordance with the applicable rules.
26. Where amounts granted in respect of the 2009 Events are concerned, interest and additional indemnity will begin to be calculated from August 10, 2009, i.e. the date of service of the Application for authorization to institute a class action.
27. Where amounts granted in respect of the 2011 Events are concerned, interest and additional indemnity will begin to be calculated from November 7, 2011, i.e., the date of service of the Application to modify the class action which added the 2011 floods.

C- Damages for the designated person

28. The defendant will pay the following amounts to Mr. Robitaille in respect of material and moral damages resulting from the Events that occurred in 2009 and 2011:
29. In respect of material and moral damages resulting from the Events that occurred in 2009, the defendant will pay the following amounts to Mr. Eugène Robitaille: **\$11,324.25** in material damages and **\$6,000** in moral damages, plus interest and additional indemnity since August 10, 2009.
30. For damages resulting from the Events that occurred in 2011: **\$44,348.92** in material damages and **\$6,000** in moral damages plus interest and additional indemnity since November 7, 2011.
31. The Designated Person is exempt from following the Protocol since the defendant already possesses and has analyzed all the required information.
32. The amounts will be remitted to the Administrator and will be withheld by the Administrator until the Court rules regarding Class counsel's legal fees, in accordance with section V below.

D- Financial contribution toward the cost of work

33. The defendant will make an amount of \$100,000 available to the Members which will serve, in priority, to the installation of a protection system in compliance with Ville de Montréal By-law 11-010.
34. Unless this amount is used entirely to help cover the cost of installing such systems for the Members, the remaining balance will be made available to the Members who still own the building where the Event(s) occurred and who would like to carry out Demineralization work.
35. Claimants will be required to meet the conditions in the Protocol to receive a contribution toward the cost of work.

36. The contribution referred to in this section is considered to be subject to collective recovery with individual liquidation.
37. Any remaining balance after the contribution toward the cost of work referred to in this section will be dealt with in accordance with subsection 1 (1) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*.

1- Work in compliance with Ville de Montréal By-law 11-010

38. This by-law may be consulted by following the link (**By-law 11-010**) or by going to <https://montreal.ca/en/reglements-municipaux/recherche/60d7cea7fd6531716059cc33>.
39. Members who wish to carry out work in compliance with this by-law will be able to receive an amount equivalent to a maximum of 50% of the value of the work performed for these purposes, including taxes.
40. In the event that a grant has already been provided for this same work via any other Ville de Montréal grant program, the value of work qualifying for this contribution will be reduced by the amount of grant received for such work.
41. The maximum amount of contribution is \$3,000 per building, prior to the Amounts withheld.
42. In the event that total contributions requested for qualifying work exceed the total amount of \$100,000, contributions will be reduced in proportion to the available amounts (*prorata*).

2- Demineralization work

43. In the event that the amount of \$100,000 is not fully used for work carried out in compliance with By-law 11-010, the remaining amount will be made available for Demineralization work.
44. The Members/Owners affected will be able to receive an amount equivalent to a maximum of 50% of the value of work carried out for this purpose, including taxes.
45. The maximum contribution is \$2,000 per building, prior to the Amounts withheld.
46. Only Members who still own the building will be able to submit an application for financial contribution to help cover the cost of Demineralization work.
47. In the event that the total amount of contributions requested for eligible Demineralization work exceeds the remaining balance available, the contributions will be reduced in proportion to the available amounts (*prorata*).

V. AMOUNTS WITHHELD ON MEMBERS' CLAIMS

48. It is agreed that amounts to be remitted to Members must be withheld by the Administrator until the Court has ruled on the fees and disbursements of Class Counsel that shall be withheld from the compensation provided to Members.
49. It is also agreed that the percentage withheld by the *Fonds d'aide aux actions collectives* (FAAC) on amounts allocated for material and moral damages will apply to the amounts granted to Members, in accordance with the rules in subsection 1 (3) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collective*.

VI. AMOUNTS ASSUMED BY THE DEFENDANT

A- Claims administrator

50. The Parties will ask the Court to appoint a claims Administrator.
51. The Administrator's costs will be assumed by the defendant.

B- Amounts paid by the *Fonds d'aide aux actions collectives* (FAAC)

52. The full amount which the FAAC has paid to the plaintiff since the institution of the Application will be reimbursed by the defendant to Class counsel, and the latter will then pay such amount to the FAAC.
53. The resolutions and a letter of confirmation from the FAAC indicating amounts paid and invoices submitted to the FAAC must be provided as supporting documents.
54. On June 22, 2022, the total amount of assistance paid amounted to \$536,063.62 (\$84,650.00 in fees; \$20,298.83 in disbursements and \$431,114.79 for expert witness costs).
55. A request for financing in the amount of \$60,669.13 is currently pending and should be heard on November 29, 2022.

C- Expert fees not covered by the FAAC

56. The defendant will reimburse expert fees not covered by the FACC upon receipt of supporting documents provided by the plaintiff.

D- Cost of publication of notices

57. The defendant will assume all costs related to the publication of notices.

VII. STATEMENT OF INTENT BY THE DEFENDANT

58. The defendant hereby makes the following statement in connection with this Agreement:

“Whereas since the filing of the current class action, the City has carried out work to some of its sewage facilities serving the city block in question in order to improve the service.

Whereas since the filing of the current class action, the City has planted strips of vegetation along several streets within the block and has taken steps to redesign Augier square.

Whereas the City wishes to invest and take action to help preserve the environment and citizens’ quality of life, it will continue to introduce “greening” initiatives to encourage sustainable rainwater management, in this case by encouraging green alleys and extending strips of vegetation along city streets. These measures seek to increase ground-level greening and to reduce mineralized surfaces”.

VIII. MISCELLANEOUS PROVISIONS

59. This Agreement constitutes the complete agreement between the Parties in respect of the subject of and matters addressed in the Agreement and supersedes all prior agreements that may have been reached by the Parties.

60. The plaintiff and the Members hereby give full and final release to the defendant in respect of any claims in connection with the Events, subject to Court approval of this Agreement and its execution in full.

61. The Court will continue to have jurisdiction over the Dispute (including the Agreement) until a closing judgement is made.

AND THE PARTIES HAVE SIGNED:

IN MONTRÉAL, on November __, 2022

IN MONTRÉAL, November __, 2022

Eugène ROBITAILLE

Designated Person and representative of
the **ROSEMONT FLOODED CITIZENS'
COMMITTEE**

Plaintiff

**SYLVESTRE PAINCHAUD ET ASSOCIÉS,
S.E.N.C.R.L.**

Plaintiff's attorneys

IN MONTRÉAL, on November __, 2022

IN MONTRÉAL, on November __, 2022

**Me Patrice GUAY, Director of Legal
Affairs and Lead Attorney, Ville de
Montréal**

Duly authorized representative under
resolution CE22-1675

VILLE DE MONTRÉAL

Defendant

GAGNIER GUAY BIRON AVOCATS

Defendant's attorneys