UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re:	**Chapter 11**
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,	**Case No. 13-10670 (LHK)**
Debtor.	

SUPPLEMENTAL SUBMISSIONS OF INFORMAL COMMITTEE OF QUÉBEC CLAIMANTS IN SUPPORT OF MOTION FOR APPOINTMENT OF CREDITORS' COMMITTEE PURSUANT TO BANKRUPTCY CODE SECTION 1102(a)(2)

The Informal Committee of Québec Claimants (the "**Québec Committee**"), comprised of (i) the government of the Province of Québec, Canada (the "**Québec Government**"), (ii) the municipality of Lac-Mégantic, Québec (the "**City of Lac-Mégantic"**), and (iii) the representatives of a Canadian class action lawsuit consisting of victims of the July 6, 2013 accident that led to this chapter 11 case (the "**Québec Class Action Representatives**") hereby submit the following supplemental documents in support of the *Motion Of Informal Committee Of Québec Claimants For Appointment Of Creditors' Committee Pursuant To Bankruptcy Code Section* 1102(a)(2) (the "**Committee Motion**"):

1. Sworn Statement of Jeff Orenstein attached hereto as Exhibit A;

2. Statement of Guy Ouellet (the "Ouellet Statement") attached hereto as Exhibit B; and

3. Statement of Yannick Gagné attached hereto as Exhibit C.

Dated: September 30, 2013

Respectfully submitted,

INFORMAL COMMITTEE OF QUÉBEC CLAIMANTS

/s/ Richard P. Olson

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-and-

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: **MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,** **Debtor.**	**Chapter 11** **Case No. 13-10670 (LHK)**

SWORN STATEMENT OF JEFF ORENSTEIN

1. Together with Daniel Larochelle, I am co-counsel for the class representatives, Yannick Gagné and Guy Ouellet in a proposed class proceeding filed in the Québec Superior Court on July 15, 2013 (subsequently amended) against a number of defendants in a proposed class proceeding arising out of the catastrophic crash and explosion of a train on July 6, 2013 into the centre of the town of Lac-Megantic, Québec which caused the death of approximately 50 people and substantial property damage and other damage to the town and residents of Lac-Megantic. A copy of the Second Amended Motion for Authorization in the Québec Superior Court which seeks certification of that class proceeding, as filed by our firm, is attached as **Exhibit 1**.

2. The Class Action has not been certified at this time. However, it is the only class action or personal injury/wrongful death action pending in Canada with respect to the July 6, 2013 derailment and explosion of rail cars transported explosive crude oil products. The Class Action seeks to represent ALL victims of the July 6, 2013 derailment (other than governmental entities or corporations with more than 50 employees) who suffered damages as a result of the July 6 derailment. This includes not only the personal injury and wrongful death claims but also claims

of those evacuated from their residences and claims for loss of homes, income, distress, and loss of businesses and commercial property.

3. The defendants in this proposed class proceeding include the operator of the train in question, the Montréal Main & Atlantic Railway Ltd., its parent company Rail World Inc., a number of related MM&A and Railworld companies, and the Chairman and CEO of that company Edward Burkhart and other directors and officers and employees of that company ("the Rail defendants"), Irving Oil Limited of St. John. New Brunswick and a number of related companies as well as World Fuel Services Inc. of Miami, Florida, Western Petroleum Co. and a number of other related companies ("the Oil defendants which owned the oil being transported by the train"), Canadian Pacific Railway and a number of other parties (which either owned or leased the alleged defective railcars being used to transport the oil which exploded in the train disaster) and XL Insurance Company Ltd. and related company which was the liability insurer of the rail defendants.

4. The members of the proposed class of persons whose interests are advanced and protected by this class proceeding are defined in paragraph 1 of the Second Amended Motion for Authorization. They include three general categories of claimants:

i) the families of the almost 50 victims of the train disaster who died as a result of the crash and resultant explosions and fire who have claims for the wrongful death of their relatives and damages related to those deaths and their suffering and loss;

ii) the claims of hundreds of residents of Lac-Megantic who have suffered personal financial losses as a result of the train derailment and disaster including loss of income, loss or evacuation from their homes and workplaces, mental and personal distress, or other personal financial losses; and

iii) residents of Lac-Megantic who have lost businesses or personal and commercial property as result of the catastrophic destruction of the central core of Lac-Megantic in the train disaster and resultant fire including loss of business income, property damage, and other claims.

5. The claims represented by the class proceeding are thus broad and diverse. These do not include any claims which the town of Lac-Megantic itself or the province of Québec may have for the cost of both property damage, environmental cleanup, or other financial losses which are substantial and are not asserted in the class proceeding.

6. In the province of Québec, as well as elsewhere in Canada, class actions are routinely, successfully pursued and certified in situations involving claims for personal injury or wrongful death in situations where the personal injury or wrongful death caused to class members arose as a result of common issues such as a common catastrophic tort such as the Lac-Megantic train disaster, or resulting from other tort claims such as product liability for medical devices, pharmaceutical claims or other related claims. The Supreme Court of Canada in *Hollick v. Toronto (City)* (attached as **Exhibit 2** to my affidavit) expressly stated that cases involving mass torts are generally well-suited for certification and these cases are generally not in dispute. Chief Justice McLachlin said:

> In a single-incident mass tort case (for example, an airplane crash), the scope of the appropriate class is not usually in dispute. The same is true in product liability actions (where the class is usually composed of those who purchased the product), or securities fraud actions (where the class is usually composed of those who owned the stock).[1]

7. Attached as **Exhibit 3** to my affidavit is a list of some of the product liability class proceedings which have been certified in Canada. These proceedings all involve personal injury claims. Many of these certified class proceedings have national classes, which includes the province of Quebec. I understand that the experience in US courts is substantially different. It is my opinion, as an experienced class action lawyer and also the opinion of our co-counsel Rochon Genova LLP in Toronto which is a very experienced class action firm with national experience,

[1] *Hollick v. Toronto (City)* **2001 SCC 68 at para 20.**

that the types of claims asserted on behalf of all three categories of class members in this claim are regularly certified by Canadian courts in general and Québec courts in particular. It is our opinion that there is a strong likelihood that the Québec Superior Court will certify this proposed class proceeding as a Class Action on behalf of all class members identified in the Second Amended Motion for Authorization, for all of the claims being asserted.

8. Moreover, class actions in Québec operate under an "opt out" system which, following certification of the Class Action, requires class members to affirmatively opt-out of the Class Action, otherwise they will be bound by the judgment or settlement in the action. In the vast majority of cases, the "opt out" process is only engaged following certification of the action as a class action at which time an opt-out deadline is fixed by the Québec Court by way of court order. Therefore, until such "opt-out date" has been fixed by the certification court (and victims have in fact opted-out), the Class Representatives and their counsel in this proceeding represent ALL victims of the July 6 derailment as defined in paragraph 1 of the Second Amended Motion for Authorization, even those who have commenced individual actions in Cook County, Illinois or in any other courts.

9. Under Québec law, there is no requirement that victims affirmatively "opt-in" to the class before or after a certification order. In fact this concept is very much contrary to Québec class proceedings legislation and case law interpreting the statute. Nevertheless, our offices have received very strong support from a broad cross section of class members and we have been contacted by well over 227 victims (both personal injury/wrongful death claims and property damage claimants) who have indicated that they are supportive of our efforts to gain certification of the class in Québec and want to join the class. I have compiled a spreadsheet identifying the

sorts of damage claims which comprise the more than 227 individuals who have been in touch with our offices and that spreadsheet is marked as **Exhibit 4** to my affidavit.

10. The relevant provisions of the Québec Code of Civil Procedure are set out in rules 1007 and 1008.

> 1007. A member may request his exclusion from the group by notifying the clerk of his decision, by registered or certified mail, before the expiry of the time limit for exclusion.
>
> A member who has requested his exclusion is not bound by any judgment on the demand of the representative.
>
> 1008. A member is deemed to have requested his exclusion from the group if he does not, before the expiry of the time limit for exclusion, discontinue a suit he has brought which the final judgment on the demand of the representative would decide.

11. Thus, there is no concept such as class members "signing up" with class counsel or the Class representative to "join" the class proceeding.

12. In a situation where class members have commenced a separate legal proceeding in the province of Québec or elsewhere prior to a certification order and "opt out date" established by the Québec Court, they continue to be represented in the class proceeding by the proposed class representatives and their interests continue to be protected and the Québec Superior Court continues to have jurisdiction over their claims until after a certification order is made and after the period for opting out of the class proceeding has passed. If, after that time, they have not withdrawn from the other proceeding, they will be deemed to have "opted out" of the class proceeding by the provisions of Rule 1008 of the Québec Code of Civil Procedure. Until that time, the interests of these class members/victims are represented in the Class Action under the jurisdiction of the Québec Superior Court and they will continue to have the ability to benefit from any interim settlements, final settlements, or judgments of the Québec Superior Court. Thus, all proposed class members, including those who may have commenced legal proceedings

in United States through the efforts of other counsel, continue to be represented in this Class Action and their rights are protected in this class proceeding. This includes all class members whose family members died in the disaster and have wrongful death claims in the Québec Superior Court. Pursuant to the Québec statutory law, those class members continue to have claims protected in this proceeding at least until after a decision of the Québec court certifying the proceeding and until the period for opting out has passed. It is only in circumstances where these individuals do not discontinue other proceedings prior to the opt out date, that their rights not be protected in this Class Action.

13. It should also be noted that the names of some of these claimants also appear on certain lists filed with the U.S. Bankruptcy Court for the District of Maine by the plaintiff lawyers from Texas. A number of the wrongful death claimants have advised either my co-counsel or myself that they have been advised by U.S. lawyers that they are able to participate in both actions without prejudice. While this has created some initial confusion, under Québec law, all class members are deemed to be class members unless and until they affirmatively opt out of the Class Action in accordance with the terms of the order certifying the class.

AND I HAVE SIGNED

Jeff Orenstein

Solemnly affirmed before me at Montreal
this 30th day of September, 2013

Commissioner of Oaths
for the Judicial District of Montreal

Commissaire à l'assermentation
ANDREW
GARONCE
184 895
Pour le district judiciaire de Montréal

EXHIBIT 1

CANADA

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

NO: 450-06-000001-135

(Class Action)
SUPERIOR COURT

YANNICK GAGNÉ, doing business under the trade-name MUSI-CAFÉ

and

GUY OUELLET

Petitioners

-vs.-

RAIL WORLD, INC., legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

RAIL WORLD HOLDINGS, LLC, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

MONTREAL MAINE & ATLANTIC RAILWAY LTD., legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

EARLSTON ASSOCIATES L.P., legal person duly constituted, having its head office at 8600 W Bryn Mawr Ave 500N, City of Chicago, State of Illinois, 60631, USA

and

PEA VINE CORPORATION, legal person duly constituted, having its head office at 2899 Sherman Ave, City of Monte Vista, State of Colorado, 81144, USA

and

MONTREAL, MAINE & ATLANTIC CORPORATION, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

MONTREAL, MAINE & ATLANTIC CANADA COMPANY, legal person duly constituted, having its head office at 1959 Upper Water Street, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

and

EDWARD BURKHARDT, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

ROBERT GRINDROD, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

GAINOR RYAN, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

DONALD GARDNER, JR., service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

JOE MCGONIGLE, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

CATHY ALDANA, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

THOMAS HARDING, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

IRVING OIL LIMITED, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL COMPANY, LIMITED, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL OPERATIONS GENERAL PARTNER LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL OPERATIONS LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

WORLD FUEL SERVICES CORP., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES CANADA, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

DAKOTA PLAINS HOLDINGS, INC., legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA
and

WESTERN PETROLEUM COMPANY, legal person duly constituted, having its head office at 9531 West 78th Street, Cabroile Centre, Suite #102, Eden Prairie, Minnesota, 55344. USA

and

UNION TANK CAR COMPANY, legal person duly constituted, having its head office at 175 West Jackson Blvd., City of Chicago, State of Illinois, 60604, USA

and

TRINITY INDUSTRIES, INC., legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207, USA

and

TRINITY RAIL GROUP, LLC, legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207-2401, USA

and

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION, legal person duly constituted, having its head office at 161 North Clark Street, City of Chicago, State of Illinois, 60601, USA

and

CANADIAN PACIFIC RAILWAY COMPANY, legal person duly constituted, having its head office at 401-9th Avenue SW, Suite 500, City of Calgary, Province of Alberta, T2P 4Z4

Respondents

and

XL INSURANCE COMPANY LIMITED, legal person duly constituted, having its

principal establishment at 8 Street Stephen's Green, City of Dublin, 2, Ireland

and

XL GROUP PLC, legal person duly constituted, having its principal establishment at One Bermudiana Road, City of Hamilton, HM, 08, Bermuda

Mises-en-cause

SECOND AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, YOUR PETITIONERS STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:

    - all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

B) The Respondents

2. Please note that the Respondents presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The Corporate Rail World Respondents

3. Respondent Rail World, Inc. ("Rail World") is an American rail transport holding corporation with its head office in Rosemont, Illinois. It is a railroad management and consulting company. It is the parent company of Montreal, Maine and Atlantic Railway Ltd. ("MMAR") and its president and Chief Executive Officer is Respondent Edward Burkhardt;

4. Respondent Rail World Holdings, LLC ("Rail World Holdings") is an American corporation with its head office in Rosemont, Illinois. The company holds railway investments around the world. Respondent Edward Burkhardt serves as the president of the company. Rail World Holdings is not a distinct corporate entity performing autonomous business activities, but is instead an entity created to serve as a holding company for other corporate entities and is dominated and controlled by its parent company, Rail World;

5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the U.S. states of Maine and Vermont and in the Canadian provinces of Quebec and New Brunswick. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns and leases locomotives and train cars travelling *inter alia* between Montreal, Quebec and Lac-Mégantic, Quebec. It is a wholly-owned subsidiary of Rail World and Respondent Edward Burkhardt serves as the Chairman of the Board. It is a wholly-owned subsidiary of Montreal, Maine and Atlantic Corporation ("MMAC"), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1A.** MMAR is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, either directly or indirectly through Rail World Holdings and/or MMAC;

6. Respondent Earlston Associates L.P. ("Earlston") is an American corporation with its head office in Chicago, Illinois. Its majority shareholder is Respondent Edward Burkhardt, who owns 72.78% of the corporate stock. It is the parent company of MMAC (…);

7. Respondent Pea Vine Corporation ("Pea Vine") is an American corporation with its head office in Vista, Colorado. It operates in the rail transportation industry as a railroad line-haul operator. Respondent Edward Burkhardt is the President of the company;

8. Respondent MMAC is an American corporation with its head office in Hermon, Maine. It is a wholly-owned subsidiary of Respondent Earlston. MMAC is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its parent company, Earlston;

9. Respondent Montreal, Maine & Atlantic Canada Company ("MMA Canada") is a wholly-owned subsidiary of MMAR (…), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1B**. MMA Canada is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, directly and/or through the other Rail World Respondents;

9.1 Rail World controlled and dominated its subsidiaries directly and/or through its operating and subsidiary companies, including Rail World Holdings, and MMAC, and MMAR. Respondents were operated as one economic unit or a single group enterprise as follows:

a) Each of the seven companies is a parent or subsidiary of the others or is an affiliate of the others;

b) Each of the seven companies is the agent of the others;

c) All seven companies have officers and directors in common, including most importantly, the Respondent Edward Burkhardt as explained below (…);

d) The acts and omissions set out herein were done by the Rail World Respondents in pursuit of their common enterprise; and

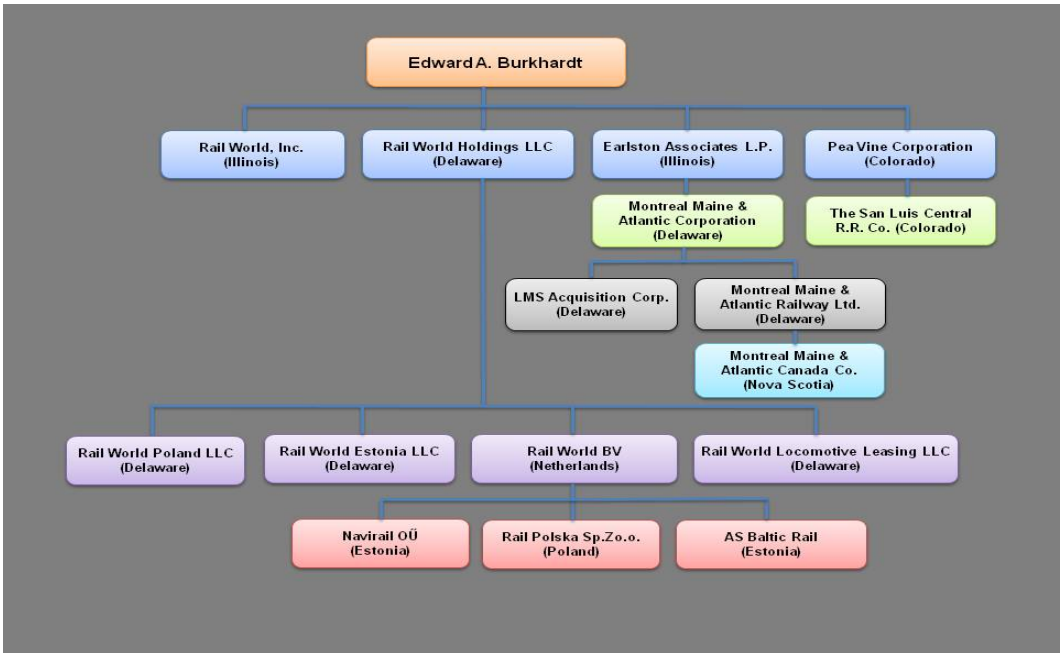
e) All of the Rail World Respondents were under the control and direction, including all aspects of their business and operations, of the Respondent Rail World and its officers and directors and its subsidiaries as described herein;

The Individual Rail World Respondents

10. Respondent Edward Burkhardt ("Burkhardt") is the President of Respondents Rail World, Rail World Holdings and Pea Vine Corporation. Mr. Burkhardt is the majority shareholder of Respondent Earlston and he serves as the Chairman of the Board of Directors at Respondent MMAR. Respondent Edward Burkhardt is responsible for the implementation and enforcement of policies and/or for the failure to implement and to enforce proper policies and procedure;

11. As is plainly illustrated below, Respondent Edward Burkhardt is the principal director of and exercises real and effective control of the other Respondents, in

effect functioning as the alter ego of the entire operation. The other officers and management of the Rail World Respondents and its affiliates effectively controlled all aspects of the business and operations of all of the Rail World Respondents as described herein;



12. Respondents Edward Burkhardt, Robert Grinrod (President and Chief Executive Officer of MMAR), Gainor Ryan (Vice-President of Human Resources of MMAR), Donald Gardner, Jr. (Vice-President Finance and Administration and Chief Financial Officer at MMAR), Joe McGonigle (Vice-President of MMAC) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are ~~the~~ collectively, the controlling minds of the Corporate Rail World Respondents;

13. Respondent Thomas Harding was the conductor of the Train;

14. Mis-en-cause XL Insurance Company Limited is a global insurance company with its head office in Ireland. It is the liability insurer of Respondent MMAR;

15. Mis-en-cause XL Group PLC is a global insurance company with its head office in Bermuda. It is the liability insurer of Respondent MMAR;

16. (…)

17. Given the close ties between the Corporate Rail World Respondents and the Individual Rail World Respondents and considering the preceding, all Corporate Rail World Respondents and Individual Rail World Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Rail World Respondents will be referred to as the "Rail

World Companies" and the Individual Rail World Respondents will be referred to as the "Senior Executive Team" for the purposes hereof. Collectively, they will be referred to as the "Rail World Respondents";

The Irving Oil Respondents

17.1 Respondent, Irving Oil Limited ("Irving Oil") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil either directly or indirectly through an agent or subsidiary purchased and had a proprietary or equitable interest in and control of the shale liquids, sometimes referred to as "shale oil" or "crude oil" (the "Shale Liquids") that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 via the train that derailed in Lac Mégantic on July 6, 2013, as described herein ("the Train");

17.2 Respondent, Irving Oil Company, Limited ("Irving Oil Co.") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil Co. either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Co. directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of DOT-111 tankers ("the Tankers") to ship the Shale Liquids. Irving Oil Co. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1C**;

17.3 Respondent, Irving Oil Operations General Partner Limited ("Irving Oil GPL") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids on the Train and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.4 Respondent, Irving Oil Operations Limited ("Irving Oil Operations") is a corporation incorporated pursuant to the laws of New Brunswick with its head

office in St. John, New Brunswick. At all material times, Irving Oil Operations either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Operations directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids, and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids on the Train. It is a wholly-owned subsidiary of Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D**. Irving Oil Operations is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.5 At all relevant times, the Respondents, Irving Oil, Irving Oil Co., Irving Oil GPL and Irving Oil Operations (hereinafter collectively "Irving Oil") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Irving Oil Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.5.1 At all relevant times the Irving Oil Respondents had a duty to the Petitioners and to the members of the Class to undertake due diligence to ensure that the Tankers and locomotives that were used to ship the Shale Liquids on the Train were safe and in conformance with all applicable safety and regulatory standards for the shipment of highly flammable and toxic petroleum products;

The World Fuel Respondents

17.5.2 Respondent, World Fuel Services Corp. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services Corp. or one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the oil. World Fuel Services Corp. exercised control over its subsidiaries and corporate divisions and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids on the Train;

17.6 Respondent, World Fuel Services, Inc. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services, Inc., either directly or indirectly through one of its subsidiaries, was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the Tankers used to carry the Shale Liquids on the Train.

World Fuel Services, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Corp;

17.7 Respondent, World Fuel Services Canada, Inc. is a corporation incorporated pursuant to the laws of British Columbia with its head office located in Miami, Florida. At all material times World Fuel Services Canada, Inc. either directly or indirectly through one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train. World Fuel Services Canada, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Inc., the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1E**;

17.8 Respondent Dakota Plains Holdings, Inc. is a corporation incorporated pursuant to the laws of Nevada with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Holdings, Inc. was a subsidiary of and/or affiliate of and/or a joint venture of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc., and/or engaged in a joint venture with World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Dakota Plains Holdings, Inc. was the seller, owner and shipper of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train;

17.8.1 Respondent Western Petroleum Company ("Western Petroleum") is a corporation incorporated pursuant to the laws of Minnesota. At all material times, Western Petroleum Company was a subsidiary of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Western Petroleum Company leased the Tankers which transported the Shale Liquids from North Dakota to Irving Oil's refinery in St. John, New Brunswick from third-party lessors, as identified below;

17.9 At all relevant times, the Respondents, World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc., (…) Dakota Plains Holdings, Inc., and Western Petroleum Company (hereinafter collectively "World Fuel") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions either directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each World Fuel Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages;

17.10 Unless the context indicates otherwise, all Irving Oil Respondents and World Fuel Respondents will be referred to collectively as the "Oil Respondents" for the purposes hereof;

The Lessor Respondents

17.10.1 Respondent Union Tank Car Company, ("Union Tank"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Chicago, Illinois. At all material times, Union Tank was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Union Tank was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.2 Respondent Trinity Industries, Inc., ("Trinity Industries"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Dallas, Texas. At all material times, Trinity Industries or a subsidiary thereof was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Industries was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.3 Respondent Trinity Rail Group, LLC, ("Trinity Rail"), is a corporation incorporated pursuant to the laws of Delaware, with its head in Dallas, Texas and is a subsidiary of Trinity Industries. At all material times, Trinity Rail was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Rail was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.4 At all relevant times, the Respondents Trinity Rail and Trinity Industries (hereinafter collectively "Trinity") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Trinity Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.5 Respondent General Electric Railcar Services Corporation, ("GE Rail Services"), is a corporation incorporated pursuant to the laws of Delaware, with

its head office in Chicago, Illinois. At all material times, GE Rail Services was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. GE Rail Services was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.6 Unless the context indicates otherwise, the Union Tank, Trinity, and GE Rail Services Respondents will be referred to collectively as the "Lessor Respondents";

17.10.7 Respondent Canadian Pacific Railway ("CP Rail") is a Canadian Railway Company, federally incorporated with its head office in Calgary, Alberta. At all material times, CP Rail subcontracted the transport of the Shale Liquids on the Train to the Rail World Respondents;

17.11 All of the Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;

C) The Situation

18. Please note that the facts presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The (…) Highly Combustible Shale Liquids

18.1 Prior to July 5, 2013, Irving Oil contracted with World Fuel for the purchase and transport of Shale Liquids, known by all of the Respondents to be obtained from the Bakken formation in North Dakota. These Shale Liquids were known to the Respondents to be a highly flammable and therefore hazardous substance. Bakken oil is known to contain high levels of flammable hydrogen sulfide gas and is much more combustible and volatile than other crude petroleum products. The Shale Liquids were mixed with other volatile substances and/or contained other chemical components that were highly flammable and not typically found in crude oil, the whole as appears more fully from a copy the Globe and Mail article entitled "Blast Probe Turns to Oil Composition", dated July 19, 2013, produced herein as **Exhibit R-1F**;

18.1.1 All Respondents knew or ought to have known that the Shale Liquids were much more volatile, explosive and combustible than typical crude oil, that they were a highly flammable mixture of multiple petroleum substances, including hydrogen sulfide gas. The Respondents knew or ought to have known that extra

precautions had to be taken in order to ensure the safe transport of the Shale Liquids by the Train;

18.2 In order to deliver the Shale Liquids to their purchaser, World Fuel contracted with (…) CP Rail to transfer the Shale Liquids from New Town, North Dakota to Montreal, Quebec. CP Rail further subcontracted to MMAR to transport the Shale Liquids from Montreal, Quebec to a rail company in New Brunswick owned by Irving Oil, which would then transport the Shale Liquids to Irving Oil's refinery in St. John, New Brunswick. Western Petroleum leased the Tankers from the Lessor Respondents for this purpose;

18.3 On or about July 5, 2013, the CP Rail train reached Côte Saint-Luc, Quebec, where the carriage of the 72 Tankers was transferred to Respondent MMAR;

18.4 The MMAR track upon which the Train was travelling was an "excepted track". Trains travelling on this track could only travel approximately 10 km/hour and could not carry hazardous materials;

The Train Derailment

19. On July 5, 2013, at approximately 11:25 PM, Respondent Harding, the one (1) engineer employed by Respondent MMAR to operate the Train, parked and tied down the Train in the town of Nantes, Québec, for a stopover en route to the province of New Brunswick, the whole as appears more fully from a copy of the Montreal, Maine and Atlantic Railway (MMAR) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;

20. The (…) Train was comprised of the 72 DOT-111 tank cars, each carrying 113,000 litres ("the Tankers") of (…) the Shale Liquids, and of 5 locomotive units (hereinafter collectively referred to as the "Train"), the whole as appears more fully from a copy of the National Post graphic article entitled "The Night a Train Destroyed a Town", produced herein as **Exhibit R-3**;

21. The estimated 9,975 ton Train was parked approximately 11 kilometers west of Lac-Mégantic, Québec, on the main rail line at an elevation point of 515 meters on an incline of approximately 1.2%;

22. Respondent Harding claims to have tied down the Train and turned off four of the five engines, leaving on the lead engine #5017 to ensure that the air brake system continued to operate, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Brakes Cited in Quebec Wreck" dated July 10, 2013, produced herein as **Exhibit R-4**;

23. Respondent Harding failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy;

24. Respondent Harding, the only employee assigned to operate the Train, then left at approximately 11:25 PM and went to a local hotel for the night, leaving the train unattended. The Train was emitting smoke at that time;

25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train's first locomotive, and called 9-1-1;

26. At approximately 11:45 PM, the Nantes fire department arrived on the scene to extinguish a small fire in the locomotive, reportedly caused by a ruptured oil or fuel line in the locomotive. In accordance with procedure, the fire department turned off the running engine so as to prevent the fire from accessing the engine's fuel;

27. At approximately 11:50 PM, the fire was reported to rail traffic control and Respondent MMAR dispatched two (2) track maintenance employees ("MMAR Representatives") to the scene. Neither Respondent Harding nor another properly qualified engineer attended ;

28. By 12:15 AM on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMAR Representatives, who either failed to take any, or failed to take adequate measures in the emergency situation to ensure that the Train was safely secured. In addition, they failed to request or to bring the situation to the attention of Harding or any other qualified engineer to ensure the safety and security of the Train, particularly its braking system. Instead, they simply left without taking appropriate and necessary measures to secure the Train;

29. At approximately 12:56 AM, after the emergency responders had left and, while no MMAR Representatives were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;

30. At approximately 1:14 AM, the Train derailed at the Rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core and business centre of the town, incinerating and killing almost fifty (50) people (hereinafter referred to as the "Train Derailment");

31. Between 1:15 AM and 4:00 AM, several tanker cars caught fire and the highly flammable tank cars filled with Shale Liquids exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuated from the area to prevent further deaths (hereinafter referred to as the "Explosion"), the whole as appears more fully from a copy of the National Post article entitled "Death Toll Rises to 13 with Dozens More Still Missing" dated July 9, 2013, produced herein as **Exhibit R-5**;

32. In the aftermath of the Train Derailment and Explosion, 47 deaths have been confirmed and 3 people suspected to have died in the explosion remain missing (…). Numerous people also sustained extensive physical injuries as a result of the blasts;

33. At least thirty (30) buildings owned and/or leased by Class Members were destroyed in the downtown "red zone" and at least 20 people lost their homes;

34. The Transportation Safety Board of Canada ("TSBC") and the Sûreté du Québec ("SQ") have both launched investigations into the causes of the Train Derailment, the whole as appears more fully from a copy of the Transportation Safety Board of Canada's Rail Investigation Report entitled "Railway investigation R13D0054" dated July 12, 2013 and from a copy of the Globe and Mail article entitled "Police signal there are sufficient grounds for charges in Lac-Mégantic" dated July 9, 2013, produced herein, *en liasse*, as **Exhibit R-6**;

35. On July 10, 2013, Rail World Respondents, through their chairman and president admitted responsibility for the derailment, destruction and deaths caused by the Train Derailment, explosion and fire. Respondent Edward Burkhardt gave an impromptu press conference to the media in Lac-Mégantic, in which he was asked by a reporter: "You don't accept full responsibility for this?", his answer was the following:

> "I didn't say that, you see people are always putting words in my mouth, please, I did not say that, we think we have plenty of responsibility here, whether we have total responsibility is yet to be determined. We have plenty of it. We're going to try to help out with everything that we can in this community, working through the city and the Red Cross to do our best to meet our obligation to make repairs and put people back in homes and things like that."

And when asked about the application of the brakes on the Train, Respondent Burkhardt replied:

> "This was a failure of the brakes; it's very questionable whether the brakes- the hand brakes- were properly applied on this train. As a matter of fact, I'd say they weren't or we wouldn't have had this incident [...] I don't think the employee removed brakes that were set; I think they failed to set the brakes in the first place. We know the brakes were applied properly on a lot of the locomotive. The fact that when the air-brakes released on the locomotive, that the train "ran away", would indicate that the hand brakes on the balance of the train were not properly applied. It was our employee that was responsible for setting an adequate number of hand brakes on the train."

The Respondent MMAR's Poor Safety Record

35.1 At all material times, the Rail World Respondents had a duty to ensure that MMAR operated safely, that each train operated by MMAR including the Train was adequately staffed to ensure the safety of all goods transported, and that MMAR's accident and incident rate was not higher than national averages, and it failed in all of these duties;

36. Since 2003, Respondent MMAR has reported 129 accidents, including 14 main track derailments and 4 collisions, according to Canada's Transportation Safety Board (Exhibit R-6), making it one of the most unsafe railway operators in North America;

37. In the United States, Respondent MMAR has reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Runaway Quebec Train's Owner Battled Safety Issues" dated July 9, 2013, produced herein as **Exhibit R-7**;

38. In 2012, Respondent MMAR had an average of 36.1 occurrences per million miles, while the national average was 14.6. Between 2003 and 2011, the company's rate ranged between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3, according to Federal Railroad Administration data (Exhibit R-7);

39. Several of these incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unmanned;

40. For example, in February 2010, a train of 3 MMAR locomotives were left unattended in Brownville Junction, Maine. The air brakes failed and the train rolled down a hill and crashed, causing physical injury and spilling more than 1,100 litres of fuel, the whole as appears more fully from a copy of the Bureau of Remediation & Waste Management report number B-97-2013, produced herein as **Exhibit R-8**;

41. On June 11, 2013, a MMAR train derailed in Frontenac, Quebec, just east of Lac Mégantic and spilled 13,000 litres of diesel fuel, the whole as appears more fully from a copy of the La Presse article entitled "Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic" dated June 11, 2013, produced herein as **Exhibit R-9**;

The Rail World Respondents' Cutbacks

42. In 2003, Respondent Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1200 kilometers of regional rail track in Maine, Vermont and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;

43. From the beginning, Respondent MMAR suffered many financial difficulties, largely due to decreases in the lumber and pulp-and-paper industries that once sustained it, the whole as appears more fully from a copy of The Gazette article entitled “Railway companies cutting back crew” dated July 10, 2013, produced herein as **Exhibit R-10**;

44. Following the takeover, employee wages were drastically cut in order to save costs. Cuts and layoffs continued in 2006 and again in 2008, the whole as appears more fully from a copy of The Ottawa Star article entitled “Lac Megantic: Railway's history of cost-cutting” dated July 11, 2013, produced herein as **Exhibit R-11**;

45. Respondent MMAR, contrary to industry standards, reduced its locomotive crews by half, replacing two (2) workers with a single employee in charge of an entire train. In North America, most train operators, including two of Canada’s largest - Canadian National Railway Ltd. and Canadian Pacific Railway Ltd- use two staff to operate one train (Exhibit R-7). In particular, it had a special duty to ensure the usage of adequate train crews of at least two (2) engineers when transporting highly flammable Shale Liquids through urban and residential areas;

46. In 2010, Respondent MMAR sold 375 kilometers of rail line in Maine to the state itself for close to $20.1 million, citing economic hardship (Exhibit R-7);

47. In 2012, Respondent MMAR’s finances had somewhat improved after years of operating losses, in part due to the new business of shipping petroleum products to Irving Oil in Saint John, New Brunswick, where the Train was headed before the Train Derailment;

48. In order the keep costs at a minimum and the company profitable, Respondent MMAR began outfitting its trains with remote-control communications technology systems and employing other cost-cutting tactics, such as employee cutbacks, with complete disregard for industry safety and security practices when transporting inherently dangerous goods;

49. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been the primary concern of the Respondents;

50. The policies pertaining to the transportation of goods by rail and the implementation of such policies by Respondent MMAR emanate from Respondent Rail World, of which Respondent Burkhardt is President and Chief Executive Officer;

51. All directives concerning the number of employees required to operate the Train, the number and manner in which the hand brakes are to be applied, the decisions to leave the Train unattended, the lack of safety and security measures or procedures are dictated and enforced by Respondent Rail World and its alter ego, Respondent Burkhardt in his capacity as President and Chairman of the Board, at his sole unfettered discretion;

52. Canada's rail industry is largely self-regulating, allowing rail corporations such as Respondent Rail World to implement and enforce their own guidelines and standards. Because of the lack of regulation in this industry, it is impossible to know whether these corporations actually implemented these protocols and, if so, whether they actually adhered to their safety protocols;

53. Respondent Burkhardt, through Respondent Company Rail World maintains authority, control, decision making and governing power over all the subsidiary and affiliated corporations including Respondents Rail World Holdings, MMAR, Earlston, Pea Vine, MMAC, MMAR Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

53.0.1 Overall, the Rail World Respondents, through their policies and practices, operated MMAR without adequate staffing and safety precautions, thereby resulting in an increased likelihood of accidents and incidents involving trains that placed members of the public at an elevated risk of harm;

The DOT-111 Tankers are Prone to Rupture and Explosion

53.1 DOT-111 tank cars, also known as CTC-111A tank cars, were leased Western Petroleum from the Lessor Respondents. The Tankers were used to transport the Shale Liquids from North Dakota to New Brunswick. The Tankers are multi-purpose, non-pressure tank cars that are widely known or ought to have been known by all Respondents, and are known by regulators to be highly vulnerable to leaks, ruptures and explosions;

53.2 Respondents knew or ought to have known that the United States National Transportation Safety Board ("U.S. NTSB") repeatedly noted in numerous investigations, beginning as early as May 1991, that DOT-111 model tank cars have multiple design flaws which result in a high incidence of tank failures during collisions, and render them unsuitable for the transport of dangerous and explosive products, the whole as appears more fully from a copy of the U.S. NTSB Safety Recommendation dated March 2, 2012, produced herein as **Exhibit R-12**;

53.3 All Respondents knew or ought to have known that the TSBC also noted that the DOT-111 tank's design is flawed, resulting in a high incidence of tank failure

during accidents and should not have been used to transport highly combustible and explosive Shale Liquids such as those liquids and gases contained in The Tankers. Accidents in Canada, alone, where DOT-111 design flaws were ultimately identified as a contributing causal factor to the damage that were caused are numerous and include:

a) the January 30, 1994 derailment of 23 freight cars northwest of Sudbury, Ontario, in which three DOT-111 tanks cars containing dangerous goods failed and released product; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 30, 1994, produced herein as **Exhibit R-13**;

b) the October 17, 1994 derailment of six tank cars containing methanol in Lethbridge, Alberta. Four derailed DOT-111 tank cars failed and released approximately 230,700 litres of methanol. A 20-square-block area of the city was evacuated; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated October 17, 1994, produced herein as **Exhibit R-14**;

c) the January 21, 1995 derailment of 28 freight cars of sulfuric acid near Gouin, Quebec. Eleven DOT-111 tanks failed and released 230,000 litres of sulphuric acid, causing considerable environmental damage; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 21, 1995, produced herein as **Exhibit R-15**;

d) the August 27, 1999 derailment of a DOT-111 tank that failed and released 5,000 gallons of combustible product in Cornwall, Ontario, resulting in a temporary evacuation of customers and staff from nearby businesses; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated August 27, 1999, produced herein as **Exhibit R-16**; and

e) the May 2, 2005 collision of 74 freight cars, in which a DOT-11 tank failed and released 98,000 litres of denatured alcohol, resulting in the evacuation of 200 people; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated May 2, 2005, produced herein as **Exhibit R-17**;

53.4 Flaws in the design of the DOT-111 tank cars that were known or ought to have been known by the Respondents include:

a) the tank is not double-hulled and its steel head and shell are too thin to resist puncture;

b) the steel shell is not made of normalized steel, which is more resistant to rupture;

c) the tank's ends are especially vulnerable to tears from couplers that can fly up after ripping off between cars;

d) unloading valves and other exposed fittings on the tops of the tanks easily break during rollovers as they do not have protective guards, and when this happens the tanks have the capacity to rapidly unload; and

e) the tanks are not equipped with shields to resist shock in the event of a collision (Exhibit R-12).

As a result, it was widely known that the tankers were highly prone to failure and leakage even in collisions at low speed and should not have been used to transport the Shale Liquids;

53.5 These flaws were repeatedly identified and publicized as being of great concern to Canadian and American regulators. In 2011, the American Association of Railroads' Tank Car Committee imposed design changes intended to improve safety in new DOT-111s, including requirements for thicker heads, low-pressure release valves and puncture-proof shells. These design modifications have also been adopted for new DOT-111 cars manufactured and used in Canada, but there is no requirement to modify existing tanks. While these changes decrease the likelihood of tank rupture in tanks produced in late 2011 and onwards, the benefits are not realized unless a train is composed entirely of tanks that possess these modifications. None of the tankers in question had received the design reinforcement changes described above;

53.6 In the presence of ongoing concerns, the U.S. NTSB issued safety guidelines in March, 2012 for all DOT-111s, which included a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to render them more resistant to punctures and explosions and that existing non-reinforced tankers be phased out completely. These guidelines highlighted the dangers posed by the transport of large quantities of ethanol and crude oil by rail and specifically cited the increased volume of crude oil being shipped out of the Bakken region of North Dakota as one of many justifications for the requirement for improved standards (Exhibit R-12). Respondents knew or ought to have known of these safety guidelines and should have ensured that Shale Liquids were not transported in The Tankers or alternatively that Shale Liquids were only transported in tankers that had been reinforced in a manner consistent with the guidelines;

53.7 Despite known concerns surrounding the use of non-reinforced tankers to transport Shale Liquids all of The Tankers involved in the Train Derailment were

older and non-reinforced DOT-111 tanks, thus remaining highly prone to rupture and explosion in the event of a derailement;

53.8 Respondents knew or ought to have known that DOT-111 tanks were prone to rupture and should therefore not have been used to transport the Shale Liquids. The Respondents had a duty to ensure that the Shale Liquids were not transported in the Tankers and were safely transported in tanks that had proper safety features and reinforcement to limit failure in the event of a derailement, such as double-hulls, thicker shells and heads, front and rear shields to absorb the impact of collisions, guards for fittings, and gauges to restrict the rapid unloading of tank contents;

D) The Faults

54. The Respondents had a duty to the Petitioners and the Class Members to abide by the rules of conduct, usage or law to ensure the safe transportation of the Shale Liquids and the safe operation of the Train;

54.1 The Respondents had a duty to the Petitioners and the Class Members to exercise reasonable care in their determination of the methods, railway, railway operator and tanks used to ship the Shale Liquids from North Dakota to New Brunswick, and to exercise reasonable care in their physical shipment of the Shale Liquids from North Dakota to New Brunswick;

55. The Train Derailment and the resulting injuries and damages were caused by the faults of the Respondents themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

A. With regards to the Oil Respondents:

a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

a.1) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced to improve their safety in the event of a collision;

c) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

d) they failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;

d.1) they failed and/or neglected to hire a safe and qualified railway operator that would have adequately staffed its trains to ensure safety and would not have left trains transporting dangerous and explosive materials unattended;

d.2) they failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead they directly or indirectly contracted with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

d.3) they failed and/or neglected to hire a safe and qualified railway operator that would have been adequately capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to Petitioners and members of the Class, including those killed and injured as a result of the Train Derailment;

e) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;

f) they failed and/or neglected to promulgate, implement and enforce adequate rules and regulations pertaining to the safe shipment of the Shale Liquids by train in accordance with all industry and regulatory standards;

g) they hired insufficient and incompetent employees and servants, and are liable for the acts, omissions or negligence of same;

h) they failed or neglected to properly instruct and educate their employees on how to safely transfer Shale Liquids by train and had inadequate operating standards and protocols;

i) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

B. With regards to the Rail World Respondents:

a) they failed and/or neglected to take reasonable or any care to ensure that the Train was safely and securely stationed for the night on July 5, 2013;

b) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before leaving it unattended on July 5, 2013;

c) they failed and/or neglected to activate or secure a reasonable amount of the Train's hand brakes both before and after the fire at 11:30 PM on July 5, 2013;

d) they failed and/or neglected to have or maintain the Train in proper state of mechanical order suitable for the safe use thereof;

e) they failed and/or neglected to take the appropriate safety and security measures following the fire;

e.1) they failed and/or neglected to ensure that a qualified train engineer or any other qualified employee inspected the train following the fire;

e.2) they failed and/or neglected to contact Respondent Harding following the fire to inform him that the fire had occurred, that the Train's engine had been turned off, and that the Train's air brakes were no longer operational;

e.3) they failed and/or neglected to ensure that the Train remained attended at all times during and following the fire on the evening of July 5, 2013

e.4) they failed and/or neglected to implement appropriate and adequate safety protocols to follow in emergency situations;

e.5) they failed and/or neglected to adequately train their employees in safety protocols in emergency situations;

f) they failed and/or neglected to consider the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;

g) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so and they failed and/or neglected to prevent such an incident from occurring;

h) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;

i) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;

j) they permitted incompetent employees, whose faculties of observation, perception and judgment were inadequate, to operate the Train;

k) they caused and/or allowed the train to be operated by a single conductor despite the fact that they knew or should have known that having at least two (2) conductors on board was the common safe practice;

l) they permitted a person to operate the Train who failed to identify a dangerous situation and take appropriate measures to avoid it;

m) they failed or neglected to properly instruct and educate their employees on how to safely operate the Train and the appropriate measures to take after a fire;

n) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of resulting damage;

o) they agreed to transport hazardous and explosive materials in a wholly unsafe and inadequate manner and thus failed to ensure the safety of the public;

p) they allowed MMAR, MMAC, and/or MMA Canada to operate without adequate capitalization, including maintaining both adequate capital and adequate liability insurance coverage, in the event that such an incident occurred and damages needed to be paid;

C. With regards to the Lessor Respondents:

a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced;

c) they knew or ought to have known and/or failed to make any inquiries regarding the hazardous and flammable nature of the Shale Liquids when they ought to have done so, thereby allowing a hazardous and flammable liquid to be transported in an unsafe manner;

d) they failed and/or neglected to inspect or to adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

e) they failed and/or neglected to promulgate, to implement and to enforce rules and regulations pertaining to the safe shipment of the Shale Liquids by train;

f) they hired incompetent employees and servants, and are liable for the acts, omissions and/or negligence of same;

g) they failed to or neglected to properly instruct and educate their employees on the transfer Shale Liquids by train; and

h) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

D. With regards to the CP Rail Respondent:

a) although it was familiar with the track, as its previous owner, and knew it was an excepted track, it still subcontracted with MMAR, despite its poor safety record and inadequate insurance coverage;

b) it failed and/or neglected to hire a safe and qualified railway operator that would have been adequately solvent, capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to Petitioners and members of the Class, including those killed and injured as a result of the Train Derailment;

c) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

d) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

e) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced to improve their safety in the event of a collision;

f) it failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;

g) it failed and/or neglected to hire a safe and qualified railway operator that would have adequately staffed its trains to ensure safety and would not have left trains transporting dangerous and explosive materials unattended;

h) it failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead it

contracted with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

i) it had a duty to use a safe and qualified railway operator that abided by accepted industry and regulatory standards and that maintained adequate industry ranking in terms of safety;

j) it failed and/or neglected to inspect or adequately inspect the Train and its equipment or the track before contracting with MMAR to transport the Shale Liquids on the MMAR track;

k) it failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when it ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;

l) it allowed a dangerous situation to exist, when, by the use of a reasonable effort, it could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

55.1 The Train Derailment and the resulting injuries and damages were caused by the Respondents. The Respondents knew or should have known about the volatility of the Shale Liquids, the defects and unsuitability of the DOT-111 tankers used to transport the Shale Liquids, the poor safety record of the Rail World Respondents, and the fact that transport of a dangerous substance was occurring in a residential area;

55.2 The Respondents had a duty to take care to minimize all safety risks associated with the transportation of the Shale Liquids by ensuring that the Shale Liquids were transported in properly reinforced tanks with adequate safety features to reduce the impact of collision and likelihood of failure; by ensuring that the railway used to ship the Shale Liquids had a strong safety record and low record of collisions; and by ensuring that all staff involved in the transport of the Shale Liquids were adequately trained and that the Train would be adequately staffed during the trip to New Brunswick; and failed to do so;

55.2 This negligence and/or recklessness and the resulting risk of harm was directed towards the general public, which in turn materialized as against the Petitioners and the Class Members. The Respondents knowingly endangered the safety of the Petitioners and the Class Members by shipping the Shale Liquids, a highly flammable and inherently dangerous product, through residential areas in a manner that was known to be dangerous and to result in an increased likelihood of collision, explosion and fire;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

Petitioner Ouellet

56. Petitioner Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;

57. Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;

58. Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;

59. Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;

60. As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;

61. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

62. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Gagné

63. Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;

64. Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;

65. Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment;

66. As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café;

67. After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;

68. Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;

69. Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;

70. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

71. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

72. Every member of the group resided in, owned or leased property in or were physically present in Lac-Mégantic, Quebec and suffered a loss of nature or kind resulting directly or indirectly from the Train Derailment;

73. Each member of the class is justified in claiming at least one or more of the following as damages:

a. For physical injury or death, the individuals or their estates may claim at least one or more of the following non-exhaustive list, namely:

i. pain and suffering, including physical injury, nervous shock or mental distress;
ii. loss of enjoyment of life;
iii. past and future lost income;
iv. past and future health expenses which are not covered by Medicare;
v. property damages; and/or
vi. any other pecuniary losses;

b.Those individuals who did not suffer physical injury may claim one or more of the following non-exhaustive list, namely:

i. mental distress;
ii. incurred expenses;
iii. lost income;
iv. expenses incurred for preventative health care measures which are covered by Medicare ;
v. inconvenience;
vi. loss of real or personal property;
vii. property damages causing replacement and/or repairs;
viii. diminished value of real property; and/or
ix. any other pecuniary losses;

c. Family members of those that died or were physically injured may claim one or more of the following non-exhaustive list, namely:

i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
ii. funeral expenses incurred ;
iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
vi. any other pecuniary loss;

d. Businesses Owning or Leasing Property and/or Operating in Lac-Mégantic may claim one or more of the following non-exhaustive list, namely:

i. loss of real or personal property ;
ii. property damages causing replacement or and repairs;
iii. loss of income, earnings, or profits;
iv. diminished value of real property; and/or
v. any other pecuniary loss;

74. All of these damages to the Class Members are a direct and proximate result of the Respondents' faults and/or negligence;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

75. Petitioners estimate that there are 5,932 persons living in Lac-Mégantic as of 2011. However, Petitioners are unaware of the precise number of persons who, were residing in, owning or leasing property in, or were physically present in Lac-Mégantic and suffered damages arising directly or indirectly from the Train Derailment that took place on July 6, 2013;

76. In addition, given the significant costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;

77. These facts demonstrate that it would be difficult or impractical to contact each and every member of the class to obtain mandates and to join them in one action;

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

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioners wish to have adjudicated upon by this class action

79. Individual questions, if any pale by comparison to the numerous common questions that predominate;

80. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, a single accident and the Respondents' alleged misconduct;

81. The recourse of the Class Members raises identical, similar or related questions of fact or law, namely:

a.Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b.Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c.Did the Respondents properly inspect the Train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d.Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e.Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f.Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Lessor Respondents and the CP Rail Respondent fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g.In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h.What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i.Are members of the class entitled to bodily, moral and/or material damages?

j.Are members of the class entitled to aggravated and/or punitive damages?

k.Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

82. The interest of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

83. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) <u>The Petitioners request that he be attributed the status of representative of the Class</u>

85. Petitioners are members of the class;

86. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the Fonds d'aide aux recours collectifs, as the case may be, and to collaborate with their attorneys;

87. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

88. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

89. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

90. Petitioners are in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

91. Petitioners understand the nature of the action;

92. Petitioners' interests are not antagonistic to those of other members of the class;

B) The Petitioners suggest that this class action be exercised before the Superior Court of Justice in the district of Mégantic

93. A great number of the members of the class reside in the judicial district of Mégantic (…);

94. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

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

ASCRIBE the Petitioners the status of representatives of the persons included in the class herein described as:

- all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

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

a.Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b.Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c.Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d.Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e.Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f.Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Lessor Respondents and the CP Rail Respondent fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g.In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h.What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i.Are members of the class entitled to bodily, moral and/or material damages?

j.Are members of the class entitled to aggravated and/or punitive damages?

k.Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

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

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

ORDER that said notice be available on the Respondents' websites with a link stating "Notice to all persons and entities residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic and who have suffered a loss relating to the Train Derailment that took place on July 6, 2013";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Lac-Mégantic, August 16, 2013

(s) Daniel E. Larochelle

_____

ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

(s) Jeff Orenstein

_____

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioners

EXHIBIT 2

John Hollick *Appellant*

v.

City of Toronto *Respondent*

and

Friends of the Earth, West Coast Environmental Law Association, Canadian Association of Physicians for the Environment, the Environmental Commissioner of Ontario and Law Foundation of Ontario *Interveners*

INDEXED AS: HOLLICK *v.* TORONTO (CITY)

Neutral citation: 2001 SCC 68.

File No.: 27699.

2001 : June 13; 2001: October 18.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Practice — Class actions — Certification — Plaintiff complaining of noise and physical pollution from landfill owned and operated by city — Plaintiff bringing action against city as representative of some 30,000 other residents who live in vicinity of landfill — Whether plaintiff meets certification requirements set out in provincial class action legislation — Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 5(1).

The appellant complains of noise and physical pollution from a landfill owned and operated by the respondent city. He sought certification, under Ontario's *Class Proceedings Act, 1992*, to represent some 30,000 people who live in the vicinity of the landfill. The motions judge found that the appellant had satisfied each of the five certification requirements set out in s. 5 of the Act and ordered that the appellant be allowed to pursue his action as representative of the stated class. The Divisional Court overturned the certification order on the grounds that the appellant had not stated an identifiable class

John Hollick *Appelant*

c.

Ville de Toronto *Intimée*

et

Ami(e)s de la terre, West Coast Environmental Law Association, Association canadienne des médecins pour l'environnement, Commissaire à l'environnement de l'Ontario et La fondation du droit de l'Ontario *Intervenants*

RÉPERTORIÉ : HOLLICK *c.* TORONTO (VILLE)

Référence neutre : 2001 CSC 68.

N° du greffe : 27699.

2001: 13 juin; 2001 : 18 octobre.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et Arbour.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Pratique — Recours collectifs — Certification — Plainte contre du bruit et de la pollution provenant d'une décharge municipale — Action intentée par le demandeur contre la ville à titre de représentant de 30 000 autres personnes vivant dans les environs de la décharge — Les demandeurs respectent-ils les conditions de certification établies dans la loi provinciale sur les recours collectifs? — Loi de 1992 sur les recours collectifs, L.O. 1992, ch. 6, art. 5(1).

L'appelant se plaint du bruit et de la pollution physique provenant d'une décharge que possède et exploite la ville intimée. En application de la *Loi de 1992 sur les recours collectifs de l'Ontario*, il demande la certification d'un recours collectif où il représenterait quelque 30 000 personnes habitant à proximité de la décharge. Le juge des requêtes conclut qu'il satisfait aux cinq conditions de certification prévues à l'art. 5 de la Loi et autorise l'appelant par ordonnance à poursuivre l'action comme représentant du groupe défini. La Cour divisionnaire infirme l'ordonnance de certification, ayant conclu

and had not satisfied the commonality requirement. The Court of Appeal dismissed the appellant's appeal, agreeing with the Divisional Court that commonality had not been established.

Held: The appeal should be dismissed.

The *Class Proceedings Act, 1992* should be construed generously to give full effect to its benefits. The Act was adopted to ensure that the courts had a procedural tool sufficiently refined to allow them to deal efficiently, and on a principled rather than *ad hoc* basis, with the increasingly complicated cases of the modern era.

In this case there is an identifiable class within the meaning of s. 5(1)(b). The appellant has defined the class by reference to objective criteria, and whether a given person is a member of the class can be determined without reference to the merits of the action. With respect to whether "the claims . . . of the class members raise common issues", as required by s. 5(1)(c), the underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be common only where its resolution is necessary to the resolution of each class member's claim. Further, an issue will not be "common" in the requisite sense unless the issue is a substantial ingredient of each of the class members' claims. Here, if each of the class members has a claim against the respondent, some aspect of the issue of liability is common within the meaning of s. 5(1)(c). The issue is whether there is a rational connection between the class as defined and the asserted common issues. While the putative representative must show that the class is defined sufficiently narrowly, he or she need not show that everyone in the class shares the same interest in the resolution of the asserted common issue. The appellant has met his evidentiary burden. It is sufficiently clear that many individuals besides the appellant were concerned about noise and physical emissions from the landfill. Moreover, while some areas within the geographical area specified by the class definition appear to have been the source of a disproportionate number of complaints, complaints were registered from many different areas within the specified boundaries.

A class proceeding would not be the preferable procedure for the resolution of the common issues, however, as required by s. 5(1)(d). In the absence of legislative guidance, the preferability inquiry should be conducted through the lens of the three principal advantages of class actions: judicial economy, access

que l'appelant n'a pas établi l'existence d'un groupe identifiable et de questions communes. La Cour d'appel partage l'avis de la Cour divisionnaire que l'existence de questions communes n'a pas été établie et déboute l'appelant.

Arrêt : Le pourvoi est rejeté.

Il faut interpréter libéralement la *Loi de 1992 sur les recours collectifs* pour lui donner plein effet. La Loi a été adoptée pour donner aux tribunaux un instrument de procédure bien adapté leur permettant de statuer efficacement, en fonction de principes établis plutôt que cas par cas, sur les affaires de plus en plus complexes de l'époque actuelle.

En l'espèce, il existe un groupe identifiable au sens de l'al. 5(1)b). L'appelant a défini le groupe en recourant à des critères objectifs et on peut déterminer si une personne est membre du groupe sans se référer au fond de l'action. Sur la question de savoir si « les demandes [. . .] des membres du groupe soulèvent des questions communes », selon l'al. 5(1)c), la question sous-jacente est de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition de l'appréciation des faits ou de l'analyse juridique. Par conséquent, une question n'est commune que lorsque sa résolution est nécessaire pour le règlement des demandes de chaque membre du groupe. Par ailleurs, une question n'est « commune » au sens voulu que s'il s'agit d'un élément important des demandes de chaque membre du groupe. En l'espèce, si chaque membre du groupe a une demande à faire valoir contre l'intimée, un aspect de la question de la responsabilité est commun au sens de l'al. 5(1)c). La question est de savoir s'il existe un lien rationnel entre le groupe tel qu'il est défini et les questions communes énoncées. S'il incombe au représentant proposé d'établir que le groupe est défini de manière suffisamment étroite, il n'est pas tenu de montrer que tous les membres du groupe partagent le même intérêt dans le règlement de la question commune énoncée. L'appelant a apporté la preuve requise. Il est suffisamment clair que de nombreuses autres personnes que l'appelant ont été préoccupées par le bruit et les rejets physiques provenant de la décharge. De plus, même si un nombre disproportionné de plaintes paraissent provenir de certaines parties du territoire décrit dans la définition du groupe, des habitants de nombreux autres secteurs compris dans ce territoire se sont plaints.

Toutefois, le recours collectif ne serait pas le meilleur moyen de régler les questions communes, comme l'exige l'al. 5(1)d). En l'absence de paramètres établis par le législateur, la question du meilleur moyen est fonction des trois principaux avantages du recours collectif : l'économie de ressources judiciaires, l'accès à la

to justice, and behaviour modification. The question of preferability must take into account the importance of the common issues in relation to the claims as a whole. The preferability requirement was intended to capture the question of whether a class proceeding would be preferable in the sense of preferable to other procedures such as joinder, test cases and consolidation. The preferability analysis requires the court to look to all reasonably available means of resolving the class members' claims, and not just at the possibility of individual actions. The appellant has not shown that a class action is the preferable means of resolving the claims raised here. With respect to judicial economy, any common issue here is negligible in relation to the individual issues. While each of the class members must, in order to recover, establish that the landfill emitted physical or noise pollution, it is likely that some areas were affected more seriously than others, and that some areas were affected at one time while other areas were affected at other times. Once the common issue is seen in the context of the entire claim, it becomes difficult to say that the resolution of the common issue will significantly advance the action. Nor would allowing a class action here serve the interests of access to justice. The fact that no claims have been made against the Small Claims Trust Fund may suggest that the class members claims are either so small as to be non-existent or so large as to provide sufficient incentive for individual action. In either case access to justice is not a serious concern. The argument that behaviour modification is a significant concern in this case should be rejected for similar reasons.

Cases Cited

Referred to: *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330; *Bywater v. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172; *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, 2001 SCC 46; *Caputo v. Imperial Tobacco Ltd.* (1997), 34 O.R. (3d) 314; *Webb v. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 389; *Mouhteros v. DeVry Canada Inc*. (1998), 41 O.R. (3d) 63; *Taub v. Manufacturers Life Insurance Co.* (1998), 40 O.R. (3d) 379; *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (2d) 453; *Rumley v. British Columbia*, [2001] 3 S.C.R. 184, 2001 SCC 69.

Statutes and Regulations Cited

Class Proceedings Act, R.S.B.C. 1996, c. 50, s. 4(2).
Class Proceedings Act, 1992, S.O. 1992, c. 6, ss. 2(1), (2), 5(1), (4), (5), 6.

justice et la modification des comportements. Sur la question du meilleur moyen, il faut examiner l'importance des questions communes par rapport à l'ensemble des revendications. L'exigence concernant le meilleur moyen consiste à se demander si le recours collectif est un moyen préférable à d'autres procédures comme la jonction ou la réunion d'instances, ou la cause type. Le tribunal, dans l'analyse du meilleur moyen, doit examiner tous les moyens raisonnables offerts pour régler les demandes des membres du groupe, et non seulement la possibilité de recours individuels. L'appelant n'a pas établi que le recours collectif est le meilleur moyen de régler les demandes en l'espèce. En ce qui concerne l'économie de ressources judiciaires, toute question commune en l'espèce est négligeable par rapport aux questions individuelles. Même si chaque membre du groupe doit, pour obtenir réparation, prouver la pollution physique ou sonore, il est probable que certains secteurs ont été touchés plus gravement que d'autres et que différentes parties du territoire ont été frappées à différents moments. Une fois la question commune considérée dans le contexte global de la demande, il devient difficile d'affirmer que le règlement de la question commune fera progresser substantiellement l'instance. Autoriser le recours collectif en l'espèce ne favoriserait pas non plus l'accès à la justice. Le fait qu'aucune réclamation n'a été présentée au fonds d'indemnisation permet de penser que les demandes des membres du groupe sont soit modestes au point d'être non existantes, soit suffisamment importantes pour qu'il vaille la peine d'engager des instances individuelles. Dans les deux cas, l'accès à la justice n'est pas une préoccupation sérieuse. Pour des motifs similaires, il faut écarter l'argument que la modification du comportement est une considération importante en l'espèce.

Jurisprudence

Arrêts mentionnés : *Rylands c. Fletcher* (1868), L.R. 3 H.L. 330; *Bywater c. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172; *Western Canadian Shopping Centres Inc. c. Dutton*, [2001] 2 R.C.S. 534, 2001 CSC 46; *Caputo c. Imperial Tobacco Ltd.* (1997), 34 O.R. (3d) 314; *Webb c. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 389; *Mouhteros c. DeVry Canada Inc*. (1998), 41 O.R. (3d) 63; *Taub c. Manufacturers Life Insurance Co.* (1998), 40 O.R. (3d) 379; *Abdool c. Anaheim Management Ltd.* (1995), 21 O.R. (2d) 453; *Rumley c. Colombie-Britannique*, [2001] 3 R.C.S. 184, 2001 CSC 69.

Lois et règlements cités

Charte des droits environnementaux de 1993, L.O. 1993, ch. 28, art. 61(1), 74(1).
Class Proceedings Act, R.S.B.C. 1996, ch. 50, art. 4(2).

Code of Civil Procedure, R.S.Q., c. C-25, Book IX.
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Michael McGowan, Kirk M. Baert, *Pierre Sylvestre* and *Gabrielle Pop-Lazic*, for the appellant.

Code de procédure civile, L.R.Q., ch. C-25, livre IX.
Federal Rules of Civil Procedure, règle 23b)(3).
Loi de 1992 sur les recours collectifs, L.O. 1992, ch. 6, art. 2(1), (2), 5(1), (4), (5), 6.
Loi sur la protection de l'environnement, L.R.O. 1990, ch. E.19, art. 14(1), 99, 172(1), 186(1).
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POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1999), 46 O.R. (3d) 257, 181 D.L.R. (4th) 426 (*sub nom. Hollick c. Metropolitan Toronto (Municipality)*), 127 O.A.C. 369, 32 C.E.L.R. (N.S.) 1, 41 C.P.C. (4th) 93, 7 M.P.L.R. (3d) 244, [1999] O.J. No. 4747 (QL), rejetant l'appel d'une décision de la Cour divisionnaire (1998), 42 O.R. (3d) 473, 168 D.L.R. (4th) 760, 116 O.A.C. 108, 28 C.E.L.R. (N.S.) 198, 31 C.P.C. (4th) 64, [1998] O.J. No. 5267 (QL), qui a accueilli l'appel d'une décision de la Cour de l'Ontario (Division générale) (1998), 27 C.E.L.R. (N.S.) 48, 18 C.P.C. (4th) 394, [1998] O.J. No. 1288 (QL), qui avait accordé une motion en certification de recours collectif. Pourvoi rejeté.

Michael McGowan, *Kirk M. Baert*, *Pierre Sylvestre* et *Gabrielle Pop-Lazic*, pour l'appelant.

Graham Rempe and *Kalli Y. Chapman*, for the respondent.

Robert V. Wright and *Elizabeth Christie*, for the interveners Friends of the Earth, West Coast Environmental Law Association and Canadian Association of Physicians for the Environment.

Doug Thomson and *David McRobert*, for the intervener the Environmental Commissioner of Ontario.

Written submissions only by *Mark M. Orkin, Q.C.*, for the intervener the Law Foundation of Ontario.

The judgment of the Court was delivered by

1 THE CHIEF JUSTICE — The question raised by this appeal is whether the appellant has satisfied the certification requirements of Ontario's *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and whether the appellant should accordingly be allowed to pursue his action against the City of Toronto as the representative of some 30,000 other residents who live in the vicinity of a landfill owned and operated by the City. For the following reasons, I conclude that the appellant has not satisfied the certification requirements, and consequently that he may pursue this action only on his own behalf, and not on behalf of the stated class.

I. Facts

2 The appellant Hollick complains of noise and physical pollution from the Keele Valley landfill, which is owned and operated by the respondent City of Toronto. The appellant sought certification, under Ontario's *Class Proceedings Act, 1992*, to represent some 30,000 people who live in the vicinity of the landfill, in particular:

A. All persons who have owned or occupied property in the Regional Municipality of York, in the geographic

Graham Rempe et *Kalli Y. Chapman*, pour l'intimée.

Robert V. Wright et *Elizabeth Christie*, pour les intervenants Ami(e)s de la terre, West Coast Environmental Law Association et Association canadienne des médecins pour l'environnement.

Doug Thomson et *David McRobert*, pour l'intervenant le Commissaire à l'environnement de l'Ontario.

Argumentation écrite seulement par *Mark M. Orkin*, *c.r.*, pour l'intervenante La fondation du droit de l'Ontario.

Version française du jugement de la Cour rendu par

LE JUGE EN CHEF — La question du pourvoi est de savoir si l'appelant a satisfait aux exigences de la certification prévues par la *Loi de 1992 sur les recours collectifs* de l'Ontario, L.O. 1992, ch. 6, et s'il doit donc être autorisé à poursuivre la Ville de Toronto à titre de représentant d'environ 30 000 autres personnes habitant à proximité d'une décharge appartenant à la Ville et exploitée par elle. Pour les motifs qui suivent, je conclus que l'appelant n'a pas satisfait à ces exigences et qu'il ne peut donc poursuivre la Ville qu'en son nom personnel, et non pour le compte du groupe en question.

I. Les faits

L'appelant, M. Hollick, se plaint du bruit et de la pollution physique provenant de la décharge Keele Valley que possède et exploite l'intimée la Ville de Toronto. En application de la *Loi de 1992 sur les recours collectifs*, il demande la certification d'un recours collectif et sa désignation en tant que représentant de quelque 30 000 personnes habitant à proximité de la décharge, soit :

[TRADUCTION] A. Toutes les personnes ayant possédé ou occupé un immeuble dans la municipalité régionale

area bounded by Rutherford Road on the south, Jane Street on the west, King-Vaughan Road on the north and Yonge Street on the east, at any time on or after February 3, 1991, or where such a person is deceased, the personal representative of the estate of the deceased person; and

B. All living parents, grandparents, children, grandchildren, siblings, and spouses (within the meaning of s. 61 of the *Family Law Act*) of persons who were owners and/or occupiers. . . .

The merits of the dispute between the appellant and the respondent are not at issue on this appeal. The only question is whether the appellant should be allowed to pursue his action as representative of the stated class.

Until 1983, the Keele Valley site was a gravel pit owned privately. It operated under a Certificate of Approval issued by the Ministry of the Environment in 1980. After the respondent purchased the site in 1983, the Ministry of the Environment issued a new Certificate of Approval. The 1983 Certificate covers an area of 375.9 hectares, of which 99.2 hectares are actual disposal area. The remainder of the land constitutes a buffer zone. The Certificate restricts Keele Valley to the receipt of non-hazardous municipal or commercial waste, and it sets out various other requirements relating to the processing and storage of waste at the site. It also provides for a Small Claims Trust Fund of $100,000, administered by the Ministry of the Environment, to cover individual claims of up to $5,000 arising out of "off-site impact".

The Ministry of the Environment monitors the Keele Valley site by employing two full-time inspectors at the site and by reviewing detailed reports that the respondent is required to file with the Ministry. In addition, the City of Vaughan has established the Keele Valley Liaison Committee, which is meant to provide a forum for community concerns related to the site. Until 1998, the appellant participated regularly at meetings of the Liaison Committee. Finally, the respondent maintains a telephone complaint system for members of the community.

de York, dans le territoire délimité au sud par le chemin Rutherford, à l'ouest par la rue Jane, au nord par le chemin King-Vaughan et à l'est par la rue Yonge, à tout moment depuis le 3 février 1991 ou, en cas de décès, leurs successions;

B. Tous les parents, grands-parents, enfants, petits-enfants, frères, sœurs et conjoints (au sens de l'art. 61 de la *Loi sur le droit de la famille*) vivants des personnes qui étaient propriétaires et/ou occupants . . .

Notre Cour n'est pas appelée en l'espèce à trancher au fond le litige qui oppose l'appelant et l'intimée. Elle doit seulement décider si l'appelant devrait être autorisé à exercer son recours en tant que représentant du groupe défini.

3 Jusqu'en 1983, Keele Valley était une carrière de gravier privée. Elle était exploitée conformément à un certificat d'autorisation délivré en 1980 par le ministère de l'Environnement. Après son acquisition par l'intimée en 1983, le ministère de l'Environnement a délivré un nouveau certificat d'autorisation visant 375,9 hectares, dont 99,2 hectares sont occupés par la décharge. Le reste de la superficie sert de zone tampon. Le certificat précise que la décharge Keele Valley ne peut recevoir que des déchets municipaux ou commerciaux non dangereux et qu'elle doit respecter d'autres exigences concernant le traitement et le stockage des déchets. Il prévoit en outre l'établissement d'un fonds d'indemnisation de 100 000 $ (Small Claims Trust Fund) géré par le ministère de l'Environnement pour couvrir toute réclamation de 5 000 $ ou moins résultant d'incidences externes.

4 Le ministère de l'Environnement surveille la décharge en y affectant deux inspecteurs à temps plein et en examinant les rapports détaillés que l'intimée est tenue de lui remettre. De plus, la Ville de Vaughan a créé un comité de liaison permettant à la collectivité d'exprimer les inquiétudes causées par la décharge. Jusqu'en 1998, l'appelant participe régulièrement aux réunions du comité de liaison. Enfin, la collectivité a accès à un service de plaintes par téléphone mis à sa disposition par l'intimée.

5 The appellant's claim is that the Keele Valley landfill has unlawfully been emitting, onto his own lands and onto the lands of other class members:

(a) large quantities of methane, hydrogen sulphide, vinyl chloride and other toxic gases, obnoxious odours, fumes, smoke and airborne, bird-borne or air-blown sediment, particulates, dirt and litter (collectively referred to as "Physical Pollution"); and

(b) loud noises and strong vibrations (collectively referred to as "Noise Pollution");

The appellant filed a motion for certification on November 28, 1997. In support of his motion, the appellant pointed out that, in 1996, some 139 complaints were registered with the respondent's telephone complaint system. (Before this Court, the appellant submitted that "at least 500" complaints were made "to various governmental authorities between 1991 and 1996" (factum, at para. 7).) The appellant also noted that, in 1996, the respondent was fined by the Ministry of Environment in relation to the composting of grass clippings at a facility located just north of the Keele Valley landfill. In the appellant's view, the class members form a well-defined group with a common interest *vis-à-vis* the respondent, and the suit would be best prosecuted as a class action. The appellant seeks, on behalf of the class, injunctive relief, $500 million in compensatory damages and $100 million in punitive damages.

6 The respondent disputes the legitimacy of the appellant's complaints and disagrees that the suit should be permitted to proceed as a class action. The respondent claims that it has monitored air emissions from the Keele Valley site and the data confirm that "none of the air levels exceed Ministry of the Environment trigger levels". It notes that there are other possible sources for the pollution of which the appellant complains, including an active quarry, a private transfer station for waste, a plastics factory, and an asphalt plant. In addition, some farms in the area have private compost operations. The respondent also argues that the number of registered complaints — it says that 150 people complained over the six-year period covered in the

L'appelant soutient que la décharge Keele Valley émet illégalement sur ses terres et les terres des membres du groupe :

[TRADUCTION]

a) des quantités importantes de méthane, d'hydrogène sulfuré, de chlorure de vinyle et d'autres gaz toxiques, des odeurs, des émanations et de la fumée désagréables, ainsi que des sédiments, des particules, des poussières et des déchets aérogènes ou transportés par les oiseaux ou le vent (collectivement, la « pollution physique »);

b) des bruits intenses et de fortes vibrations (collectivement, la « pollution sonore »).

Le 28 novembre 1997, l'appelant dépose une motion en certification de recours collectif. À l'appui, il fait valoir qu'en 1996, 139 plaintes ont été transmises par téléphone à l'intimée (devant notre Cour, l'appelant a soutenu [TRADUCTION] « qu'au moins 500 » plaintes ont été adressées « à diverses instances gouvernementales de 1991 à 1996 » (mémoire, par. 7).) Il signale par ailleurs qu'en 1996, le ministère de l'Environnement a infligé une amende à l'intimée pour le compostage de tontes de gazon dans des installations situées juste au nord de la décharge Keele Valley. Selon l'appelant, le groupe est bien défini et ses membres partagent un intérêt commun face à l'intimée et le recours collectif est le meilleur moyen de régler le litige. Au nom du groupe, l'appelant demande une injonction, des dommages-intérêts compensatoires de 500 000 000 $ et des dommages-intérêts exemplaires de 100 000 000 $.

L'intimée conteste le bien-fondé des doléances de l'appelant et estime que le recours collectif ne devrait pas être autorisé. Elle prétend avoir surveillé les rejets dans l'atmosphère provenant de la décharge Keele Valley et que, selon les données obtenues, [TRADUCTION] « aucun des niveaux observés n'a dépassé les niveaux d'intervention du ministère de l'Environnement ». Elle signale qu'il existe d'autres sources possibles de la pollution dont se plaint l'appelant, y compris une carrière en exploitation, un poste privé de transbordement des déchets, une fabrique de plastique et une usine de bitume. En outre, quelques fermes des environs ont des installations privées de compostage. L'intimée fait valoir par ailleurs que 150 personnes ont porté plainte au

motion record — is not high given the size of the class. Finally, it notes that, to date, no claims have been made against the Small Claims Trust Fund.

cours des six ans visés par le dossier de la motion et que ce chiffre est peu élevé compte tenu de l'importance du groupe. Enfin, elle fait remarquer qu'aucune demande d'indemnisation sur le fonds n'a été faite jusqu'à maintenant.

II. Judgments

The motions judge, Jenkins J., found that the appellant had satisfied each of the five certification requirements set out in s. 5(1) of the *Class Proceedings Act, 1992*: (1998), 27 C.E.L.R. (N.S.) 48. He found that the appellant's statement of claim disclosed causes of action under s. 99 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, and under the rule in *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330; that the appellant had defined an identifiable class of two or more persons; that the issues of liability and punitive damages were common to the class; and that a class action would be the preferable procedure for resolving the complaints of the class. Finally, he found that the appellant would be an adequate representative for the class and that the appellant had set out a workable litigation plan. Though Jenkins J. struck out the appellant's claim for injunctive relief on the ground that damages would be a sufficient remedy and rejected his claims under the *Family Law Act*, R.S.O. 1990, c. F.3, on the grounds that the facts pleaded "cannot . . . establish a basis for a claim for loss of care, guidance, and companionship" (p. 62). Jenkins J. concluded that the appellant had satisfied the certification requirements of s. 5(1). Accordingly he ordered that the appellant be allowed to pursue his action as representative of the stated class.

The Ontario Divisional Court, *per* O'Leary J., overturned the certification order on the grounds that the appellant had not stated an identifiable class and had not satisfied the commonality requirement: (1998), 42 O.R. (3d) 473. O'Leary J. interpreted the identifiable class requirement to require that "there be a class that can all pursue the same cause of action" against the defendant. He noted that "[t]o pursue such cause of action the members of the class must have suffered the interference with use and enjoyment of property complained of in the

II. Les décisions antérieures

7 Le juge des requêtes, le juge Jenkins, conclut que l'appelant remplit chacune des cinq conditions de la certification selon le par. 5(1) de la *Loi de 1992 sur les recours collectifs* : (1998), 27 C.E.L.R. (N.S.) 48. Il conclut que la déclaration de l'appelant révèle l'existence de causes d'action en vertu de l'art. 99 de la *Loi sur la protection de l'environnement*, L.R.O. 1990, ch. E.19, et suivant la règle établie dans *Rylands c. Fletcher* (1868), L.R. 3 H.L. 330; que l'appelant a défini un groupe identifiable de deux personnes ou plus; que les questions de la responsabilité et des dommages-intérêts exemplaires sont communes au groupe et que le recours collectif est le meilleur moyen de régler les demandes du groupe. Enfin, il juge que l'appelant est apte à représenter le groupe et qu'il a établi un plan d'action efficace. Même s'il refuse l'injonction au motif que les dommages-intérêts seraient une réparation suffisante et rejette ses demandes fondées sur la *Loi sur le droit de la famille*, L.R.O. 1990, ch. F.3, parce que les faits allégués [TRADUCTION] « ne peuvent [. . .] étayer la perte de conseils, de soins et de compagnie » (p. 62), le juge Jenkins conclut que l'appelant a satisfait aux exigences du par. 5(1). Il certifie donc le recours collectif et nomme l'appelant représentant du groupe défini.

8 Le juge O'Leary, de la Cour divisionnaire de l'Ontario infirme l'ordonnance de certification, estimant qu'il n'y a ni groupe identifiable ni questions communes : (1998), 42 O.R. (3d) 473. À son avis, pour qu'un groupe soit identifiable, il faut [TRADUCTION] « que tous ses membres partagent la même cause d'action » contre la partie défenderesse et, « pour partager la même cause d'action, les membres du groupe doivent avoir subi l'atteinte à l'usage et à la jouissance de la propriété dénoncée dans la déclaration » (p. 479). Le juge O'Leary conclut que

statement of claim" (p. 479). O'Leary J. concluded that the appellant had not stated an identifiable class (at pp. 479-80):

> [T]he evidence does not make it likely that th[e] 30,000 [class members] suffered such interference. It cannot be assumed that the complaints made to Toronto make it likely that the landfill was the cause of the odour or thing complained about. . . . [E]ven if one were to assume that the Keele Valley landfill site was the source of all the complaints, 150 people making complaints over a seven-year period does not make it likely that some 30,000 persons had their enjoyment of their property interfered with.

For the same reasons, he concluded that the appellant had not satisfied the commonality requirement, writing that "[b]ecause the class that was certified . . . bears no resemblance to any group that was on the evidence likely injured by the landfill operation, there are no apparent common issues relating to the members of the class" (p. 480). O'Leary J. set aside the certification order without prejudice to the plaintiff's right to bring a fresh application on further evidence.

9 The Court of Appeal for Ontario, *per* Carthy J.A., dismissed Hollick's appeal ((1999), 46 O.R. (3d) 257), agreeing with the Divisional Court that commonality had not been established. Citing *Bywater v. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172 (Ont. Ct. (Gen. Div.)), Carthy J.A. noted that the definition of a class should not depend on the merits of the litigation. However, he saw no bar to a court's looking beyond the pleadings to determine whether the certification criteria had been satisfied. "If it were otherwise", he noted, "any statement of claim alleging the existence of an identifiable group of people would foreclose further consideration by the court" (p. 264). Carthy J.A. acknowledged that a court should not test the existence of a class by demanding evidence that each member of the purported class have, individually, a claim on the merits. The court should, however, demand "evidence to give some credence to the allegation that . . . 'there is an identifiable class . . .'" (p. 264) (emphasis deleted).

l'appelant n'a pas établi l'existence d'un groupe identifiable (aux p. 479-480) :

> [TRADUCTION] [V]u la preuve, il n'est pas vraisemblable que les 30 000 [membres du groupe] aient subi une telle atteinte. On ne peut présumer, à partir des plaintes adressées à Toronto, que la décharge était à l'origine de l'odeur ou des autres désagréments en cause [. . .] [M]ême si l'on considérait que la décharge Keele Valley était la cause de toutes les plaintes, le fait que 150 personnes aient porté plainte en sept ans rend peu probable que 30 000 personnes aient subi une atteinte à la jouissance de leur propriété.

Pour les mêmes motifs, il statue que l'appelant n'a pas établi l'existence de questions communes : [TRADUCTION] « étant donné que le groupe visé par la certification [. . .] ne s'apparente aucunement à un groupe susceptible, selon la preuve, d'avoir subi un préjudice imputable à l'exploitation de la décharge, il n'existe apparemment pas de questions communes aux membres du groupe » (p. 480). Le juge O'Leary annule l'ordonnance sans préjudice du droit du demandeur de présenter une nouvelle demande étayée par une preuve additionnelle.

Partageant l'avis de la Cour divisionnaire selon lequel l'existence de questions communes n'est pas établie, la Cour d'appel de l'Ontario, par la voix du juge Carthy, rejette l'appel de Hollick : (1999), 46 O.R. (3d) 257. Citant *Bywater c. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172 (C. Ont. (Div. gén.)), le juge Carthy souligne que la définition d'un groupe identifiable ne devrait pas dépendre du fond du recours. Cependant, il ne voit aucun empêchement à ce que le tribunal regarde au-delà des actes de procédure pour décider si les conditions de la certification ont été remplies et note : [TRADUCTION] « S'il en était autrement, toute déclaration alléguant l'existence d'un groupe identifiable empêcherait le tribunal de poursuivre l'examen » (p. 264). Le juge Carthy reconnaît que, pour conclure à l'existence d'un groupe identifiable, un tribunal ne devrait pas exiger la preuve que chaque membre du groupe proposé a, individuellement, une demande fondée. Le tribunal devrait cependant exiger [TRADUCTION] « une preuve susceptible de conférer une certaine crédibilité à l'allégation qu'il . . . "existe un groupe identifiable . . ." » (p. 264) (italiques omis).

Carthy J.A. did not find it necessary to resolve the issue of whether the appellant had stated an identifiable class, because in his view the appellant had not satisfied the commonality requirement. In Carthy J.A.'s view, proof of nuisance was essential to each of the appellant's claims. Because a nuisance claim requires the plaintiff to make an individualized showing of harm, there was no commonality between the class members. Carthy J.A. wrote (at pp. 266-67):

> This group of 30,000 people is not comparable to patients with implants, the occupants of a wrecked train or those who have been drinking polluted water. They are individuals whose lives have each been affected, or not affected, in a different manner and degree and each may or may not be able to hold the respondent liable for a nuisance. . . .
>
> No common issue other than liability was suggested and I cannot devise one that would advance the litigation.

Carthy J.A. dismissed the appeal, affirming the Divisional Court's order except insofar as it would have allowed the appellant to bring a fresh application on further evidence.

III. Legislation

Class Proceedings Act, 1992, S.O. 1992, c. 6

5. — (1) The court shall certify a class proceeding on a motion under section 2, 3 or 4 if,

(a) the pleadings or the notice of application discloses a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;

(c) the claims or defences of the class members raise common issues;

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who,

(i) would fairly and adequately represent the interests of the class,

Le juge Carthy ne juge pas nécessaire de trancher la question de savoir si l'appelant a établi l'existence d'un groupe identifiable, car selon lui l'appelant n'a pas satisfait à l'exigence concernant les questions communes. À son avis, chaque allégation de l'appelant exige la preuve d'une nuisance. Comme une telle preuve oblige l'appelant à établir le préjudice individuellement, le juge Carthy conclut à l'absence de questions communes (aux p. 266-267) :

> [TRADUCTION] Ce groupe de 30 000 personnes n'est pas comparable aux patients qui ont reçu des implants, aux occupants d'un train sinistré ou aux personnes qui ont bu de l'eau polluée. La vie de chacun de ses membres a été touchée, ou ne l'a pas été, de manière différente et à un degré différent et chacun peut être ou ne pas être en mesure de tenir l'intimée responsable d'une nuisance . . .
>
> Nulle question commune autre que la responsabilité n'a été avancée, et je n'en vois aucune autre qui puisse faire progresser l'instance.

Le juge Carthy rejette l'appel, confirmant l'ordonnance de la Cour divisionnaire sauf l'autorisation de présenter une demande nouvelle étayée par une preuve additionnelle.

III. Les textes législatifs

Loi de 1992 sur les recours collectifs, L.O. 1992, ch. 6

5 (1) Le tribunal saisi d'une motion visée à l'article 2, 3 ou 4 certifie qu'il s'agit d'un recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure ou l'avis de requête révèlent une cause d'action;

b) il existe un groupe identifiable de deux personnes ou plus qui se ferait représenter par le représentant des demandeurs ou des défendeurs;

c) les demandes ou les défenses des membres du groupe soulèvent des questions communes;

d) le recours collectif est le meilleur moyen de régler les questions communes;

e) il y a un représentant des demandeurs ou des défendeurs qui :

(i) représenterait de façon équitable et appropriée les intérêts du groupe,

(ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and

(iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

6. The court shall not refuse to certify a proceeding as a class proceeding solely on any of the following grounds:

1. The relief claimed includes a claim for damages that would require individual assessment after determination of the common issues.

2. The relief claimed relates to separate contracts involving different class members.

3. Different remedies are sought for different class members.

4. The number of class members or the identity of each class member is not known.

5. The class includes a subclass whose members have claims or defences that raise common issues not shared by all class members.

(ii) a préparé un plan pour l'instance qui propose une méthode efficace de faire avancer l'instance au nom du groupe et d'aviser les membres du groupe de l'instance,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe, en ce qui concerne les questions communes du groupe.

6 Le tribunal ne doit pas refuser de certifier qu'une instance est un recours collectif en se fondant uniquement sur l'un des motifs suivants :

1. Les mesures de redressement demandées comprennent une demande de dommages-intérêts qui exigerait, une fois les questions communes décidées, une évaluation individuelle.

2. Les mesures de redressement demandées portent sur des contrats distincts concernant différents membres du groupe.

3. Des mesures correctives différentes sont demandées pour différents membres du groupe.

4. Le nombre de membres du groupe ou l'identité de chaque membre est inconnu.

5. Il existe au sein du groupe un sous-groupe dont les demandes ou les défenses soulèvent des questions communes que ne partagent pas tous les membres du groupe.

IV. Issues

12 Should the appellant be permitted to prosecute this action on behalf of the class described in his statement of claim?

V. Analysis

13 Ontario's *Class Proceedings Act, 1992*, like similar legislation adopted in British Columbia and Quebec, allows a member of a class to prosecute a suit on behalf of the class: see Ontario *Class Proceedings Act, 1992*, s. 2(1); see also Quebec *Code of Civil Procedure*, R.S.Q., c. C-25, Book IX; British Columbia *Class Proceedings Act*, R.S.B.C. 1996, c. 50. In order to commence such a proceeding, the person who seeks to represent the class must make a motion for an order certifying the action as a class proceeding and recognizing him or her as the representative of the class: see *Class Proceedings Act, 1992*, s. 2(2). Section 5 of the Act sets out five criteria by which a motions judge is to assess whether

IV. La question en litige

L'appelant devrait-il être autorisé à intenter un recours collectif au nom du groupe qu'il décrit dans sa déclaration?

V. L'analyse

La *Loi de 1992 sur les recours collectifs* de l'Ontario, comme des lois similaires de la Colombie-Britannique et du Québec, permet à un membre d'un groupe d'introduire une instance au nom du groupe : voir pour l'Ontario, *Loi de 1992 sur les recours collectifs*, par. 2(1); pour le Québec, *Code de procédure civile*, L.R.Q., ch. C-25, livre IX; pour la Colombie-Britannique, *Class Proceedings Act*, R.S.B.C. 1996, ch. 50. La personne cherchant à représenter le groupe doit demander par voie de motion une ordonnance certifiant que l'instance est un recours collectif et la nommant représentante du groupe : *Loi de 1992 sur les recours collectifs*, par. 2(2). L'article 5 de la Loi énonce cinq critères qui

the class should be certified. If these criteria are satisfied, the motions judge is required to certify the class.

The legislative history of the *Class Proceedings Act, 1992*, makes clear that the Act should be construed generously. Before Ontario enacted the *Class Proceedings Act, 1992*, class actions were prosecuted in Ontario under the authority of Rule 12.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. That rule provided that

> [w]here there are numerous persons having the same interest, one or more of them may bring or defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so.

While that rule allowed courts to deal with relatively simple class actions, it became clear in the latter part of the 20th century that Rule 12.01 was not well-suited to the kinds of complicated cases that were beginning to come before the courts. These cases reflected "[t]he rise of mass production, the diversification of corporate ownership, the advent of the mega-corporation, and the recognition of environmental wrongs": *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, 2001 SCC 46, at para. 26. They often involved vast numbers of interested parties and complex, intertwined legal issues — some common to the class, some not. While it would have been possible for courts to accommodate moderately complicated class actions by reliance on their own inherent power over procedure, this would have required courts to devise *ad hoc* solutions to procedural complexities on a case-by-case basis: see *Western Canadian Shopping Centres*, at para. 51. The *Class Proceedings Act, 1992*, was adopted to ensure that the courts had a procedural tool sufficiently refined to allow them to deal efficiently, and on a principled rather than *ad hoc* basis, with the increasingly complicated cases of the modern era.

The Act reflects an increasing recognition of the important advantages that the class action offers as a procedural tool. As I discussed at some length in *Western Canadian Shopping Centres* (at paras.

permettront au juge saisi de la motion de décider s'il y a lieu de certifier le recours collectif. Si ces conditions sont remplies, le juge doit certifier le recours collectif.

14 Il ressort de l'évolution législative de la *Loi de 1992 sur les recours collectifs* qu'il convient de l'interpréter libéralement. Avant son adoption, le recours collectif était régi, en Ontario, par la règle 12.01 des *Règles de procédure civile*, R.R.O. 1990, Règl. 194, ainsi libellée :

> Si de nombreuses personnes ont un même intérêt, une ou plusieurs d'entre elles peuvent intenter ou contester une instance au nom ou au profit de toutes les autres, ou peuvent y être autorisées par le tribunal.

Cette règle permettait aux tribunaux de régler des cas relativement simples de recours collectifs, mais il est devenu évident à la fin du XX^{e} siècle que la règle 12.01 n'était pas adaptée aux affaires complexes qui commençaient à venir devant les tribunaux. Ces affaires traduisaient « [l]a montée de la production de masse, la diversification de la propriété commerciale, la venue des conglomérats, et la prise de conscience des fautes environnementales » : *Western Canadian Shopping Centres Inc. c. Dutton*, [2001] 2 R.C.S. 534, 2001 CSC 46, par. 26. Souvent, le nombre des intéressés était considérable, et les affaires soulevaient des questions de droit complexes, enchevêtrées — dont certaines étaient communes au groupe, et d'autres pas. Les tribunaux auraient pu composer avec des recours collectifs modérément complexes en exerçant leur pouvoir inhérent en matière de procédure, mais ils auraient dû régler cas par cas les complications procédurales : voir *Western Canadian Shopping Centres*, par. 51. La *Loi de 1992 sur les recours collectifs* a été édictée pour donner aux tribunaux un instrument de procédure adapté leur permettant de statuer efficacement, en fonction de principes établis plutôt que cas par cas, sur les affaires de plus en plus compliquées de l'époque actuelle.

15 La Loi traduit la reconnaissance croissante des avantages importants qu'offre le recours collectif comme instrument de procédure. J'explique en détail dans *Western Canadian Shopping Centres*

27-29), class actions provide three important advantages over a multiplicity of individual suits. First, by aggregating similar individual actions, class actions serve judicial economy by avoiding unnecessary duplication in fact-finding and legal analysis. Second, by distributing fixed litigation costs amongst a large number of class members, class actions improve access to justice by making economical the prosecution of claims that any one class member would find too costly to prosecute on his or her own. Third, class actions serve efficiency and justice by ensuring that actual and potential wrongdoers modify their behaviour to take full account of the harm they are causing, or might cause, to the public. In proposing that Ontario adopt class action legislation, the Ontario Law Reform Commission identified each of these advantages: see Ontario Law Reform Commission, *Report on Class Actions* (1982), vol. I, at pp. 117-45; see also Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Class Action Reform* (February 1990), at pp. 16-18. In my view, it is essential therefore that courts not take an overly restrictive approach to the legislation, but rather interpret the Act in a way that gives full effect to the benefits foreseen by the drafters.

(par. 27-29) que le recours collectif a trois avantages majeurs sur les poursuites individuelles multiples. Premièrement, par le regroupement d'actions individuelles semblables, le recours collectif permet de faire des économies de ressources judiciaires en évitant la duplication inutile de l'appréciation des faits et de l'analyse du droit. Deuxièmement, en répartissant les frais fixes de justice entre les nombreux membres du groupe, le recours collectif assure un meilleur accès à la justice en rendant économiques des poursuites que les membres du groupe auraient jugées trop coûteuses pour les intenter individuellement. Troisièmement, le recours collectif sert l'efficacité et la justice en faisant en sorte que les malfaisants actuels ou éventuels prennent pleinement conscience du préjudice qu'ils infligent ou qu'ils pourraient infliger au public et modifient leur comportement en conséquence. En proposant l'adoption d'une loi sur les recours collectifs, la Commission de réforme du droit de l'Ontario a fait ressortir chacun de ces avantages : voir Commission de réforme du droit de l'Ontario, *Report on Class Actions* (1982), vol. I, p. 117-145; voir aussi ministère du Procureur général, *Report of the Attorney General's Advisory Committee on Class Action Reform*, février 1990, p. 16-18. Il est donc essentiel, selon moi, que les tribunaux n'interprètent pas la loi de manière trop restrictive, mais qu'ils adoptent une interprétation qui donne pleinement effet aux avantages escomptés par les rédacteurs.

16 It is particularly important to keep this principle in mind at the certification stage. In its 1982 report, the Ontario Law Reform Commission proposed that new class action legislation include a "preliminary merits test" as part of the certification requirements. The proposed test would have required the putative class representative to show that "there is a reasonable possibility that material questions of fact and law common to the class will be resolved at trial in favour of the class": *Report on Class Actions*, *supra*, vol. III, at p. 862. Notwithstanding the recommendation of the Ontario Law Reform Commission, Ontario decided not to adopt a preliminary merits test. Instead it adopted a test that merely requires that the statement of claim "disclos[e] a cause of action": see *Class Proceedings Act, 1992*, s. 5(1)(a). Thus the certification stage is decidedly

Il est particulièrement important d'avoir ce principe à l'esprit à l'étape de la certification. Dans son rapport de 1982, la Commission de réforme du droit de l'Ontario propose que la nouvelle loi sur les recours collectifs comporte un « critère préliminaire du bien-fondé du recours » dans les conditions de la certification. Le critère proposé aurait obligé le représentant proposé à établir [TRADUCTION] « qu'il existe une possibilité raisonnable que, au procès, des questions importantes de fait et de droit communes aux membres du groupe soient tranchées en faveur du groupe » : *Report on Class Actions*, *op. cit.*, vol. III, p. 862. Malgré la recommandation de la Commission de réforme du droit, l'Ontario n'a pas retenu le critère préliminaire du bien-fondé du recours. La *Loi de 1992 sur les recours collectifs* se contente d'exiger que la déclaration « révèl[e] une

not meant to be a test of the merits of the action: see *Class Proceedings Act, 1992*, s. 5(5) ("An order certifying a class proceeding is not a determination of the merits of the proceeding"); see also *Caputo v. Imperial Tobacco Ltd.* (1997), 34 O.R. (3d) 314 (Gen. Div.), at p. 320 ("any inquiry into the merits of the action will not be relevant on a motion for certification"). Rather the certification stage focuses on the form of the action. The question at the certification stage is not whether the claim is likely to succeed, but whether the suit is appropriately prosecuted as a class action: see generally *Report of the Attorney General's Advisory Committee on Class Action Reform*, at pp. 30-33.

With these principles in mind, I turn now to the case at bar. The issue is whether the appellant has satisfied the certification requirements set out in s. 5 of the Act. The respondent does not dispute that the appellant's statement of claim discloses a cause of action. The first question, therefore, is whether there is an identifiable class. In my view, there is. The appellant has defined the class by reference to objective criteria; a person is a member of the class if he or she owned or occupied property inside a specified area within a specified period of time. Whether a given person is a member of the class can be determined without reference to the merits of the action. While the appellant has not named every member of the class, it is clear that the class is bounded (that is, not unlimited). There is, therefore, an identifiable class within the meaning of s. 5(1)(b): see J. H. Friedenthal, M. K. Kane and A. R. Miller, *Civil Procedure* (2nd ed. 1993), at pp. 726-27; *Bywater*, *supra*, at pp. 175-76; *Western Canadian Shopping Centres*, *supra*, at para. 38.

A more difficult question is whether "the claims . . . of the class members raise common issues", as required by s. 5(1)(c) of the *Class Proceedings Act, 1992*. As I wrote in *Western Canadian Shopping Centres*, the underlying question is "whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis". Thus an issue will be common "only where its resolution is necessary to the resolution of each class member's claim" (para. 39). Fur-

cause d'action » (al. 5(1)a)). La Loi écarte carrément un examen au fond à l'étape de la certification (par. 5(5) : « L'ordonnance certifiant qu'il s'agit d'un recours collectif ne constitue pas une décision sur le fond de l'instance »). Voir aussi *Caputo c. Imperial Tobacco Ltd.* (1997), 34 O.R. (3d) 314 (Div. gén.), p. 320 ([TRADUCTION] « il n'y a lieu à aucun examen au fond dans une demande de certification »). L'étape de la certification intéresse la forme que revêt l'action. La question à cette étape n'est pas s'il est vraisemblable que la demande aboutisse, mais s'il convient de procéder par recours collectif : voir à titre général *Report of the Attorney General's Advisory Committee on Class Action Reform*, p. 30-33.

17 J'applique maintenant ces principes à l'espèce. La question est de savoir si l'appelant a satisfait aux conditions de certification de l'art. 5 de la Loi. L'intimée ne conteste pas que la déclaration de l'appelant révèle une cause d'action. Il faut donc décider tout d'abord s'il existe un groupe identifiable. Selon moi, oui. L'appelant a défini le groupe en recourant à un critère objectif : une personne en est membre si, pendant une période donnée, elle a possédé ou occupé un immeuble situé dans un territoire précis. On peut déterminer si une personne est membre du groupe sans se référer au fond de l'action. Bien que l'appelant n'ait pas nommé chaque membre, le groupe est clairement circonscrit (c'est-à-dire qu'il n'est pas sans limites). Il existe donc un groupe identifiable au sens de l'al. 5(1)b) : voir J. H. Friedenthal, M. K. Kane et A. R. Miller, *Civil Procedure* (2e éd. 1993), p. 726-727; *Bywater*, précité, p. 175-176; *Western Canadian Shopping Centres*, précité, par. 38.

18 Une question plus difficile se pose, celle de savoir si « les demandes [. . .] des membres du groupe soulèvent des questions communes », comme l'exige l'al. 5(1)c) de la *Loi de 1992 sur les recours collectifs*. Dans *Western Canadian Shopping Centres*, je dis que la question sous-jacente est « de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition de l'appréciation des faits ou de l'analyse juridique ». Par conséquent, une question n'est commune « que

ther, an issue will not be "common" in the requisite sense unless the issue is a "substantial . . . ingredient" of each of the class members' claims.

19 In this case there is no doubt that, if each of the class members has a claim against the respondent, some aspect of the issue of liability is common within the meaning of s. 5(1)(c). For any putative class member to prevail individually, he or she would have to show, among other things, that the respondent emitted pollutants into the air. At least this aspect of the liability issue (and perhaps other aspects as well) would be common to all those who have claims against the respondent. The difficult question, however, is whether each of the putative class members does indeed have a claim — or at least what might be termed a "colourable claim" — against the respondent. To put it another way, the issue is whether there is a rational connection between the class as defined and the asserted common issues: see *Western Canadian Shopping Centres*, at para. 38 ("the criteria [defining the class] should bear a rational relationship to the common issues asserted by all class members"). In asserting that there is such a relationship, the appellant points to the numerous complaints against the Keele Valley landfill filed with the Ministry of Environment. In the appellant's view, the large number of complaints shows that many others in the putative class, if not all of them, are similarly situated *vis-à-vis* the respondent. For its part the respondent asserts that "150 people making complaints over a seven-year period does not make it likely that some 30,000 persons had their enjoyment of their property interfered with" (Divisional Court's judgment, at pp. 479-80). The respondent also quotes the Ontario Court of Appeal's judgment (at p. 264), which declined to find commonality on the grounds that

> [i]n circumstances such as are described in the statement of claim one would expect to see evidence of the existence of a body of persons seeking recourse for their

lorsque sa résolution est nécessaire pour le règlement des demandes de chaque membre du groupe » (par. 39). Par ailleurs, une question n'est « commune » au sens voulu que s'il s'agit d'un « élément [. . .] important » des demandes de chaque membre du groupe.

En l'espèce, il ne fait aucun doute que, si chaque membre du groupe a une demande à faire valoir contre l'intimée, un aspect de la question de la responsabilité est commun au sens de l'al. 5(1)c). Pour avoir gain de cause individuellement, un membre du groupe proposé doit établir entre autres choses que l'intimée a rejeté des polluants dans l'air. Cet aspect au moins (ainsi que d'autres, peut-être) de la question de la responsabilité serait commun à tous ceux qui poursuivent l'intimée. Cependant, il est difficile de décider si chaque membre du groupe proposé a effectivement une demande ou, à tout le moins, une « demande apparente » à faire valoir contre l'intimée. En d'autres termes, la question est de savoir s'il existe un lien rationnel entre le groupe tel qu'il est défini et les questions communes énoncées : voir *Western Canadian Shopping Centres*, par. 38 (« [l]es critères [définissant le groupe] devraient avoir un rapport rationnel avec les revendications communes à tous les membres du groupe »). Pour établir l'existence d'un tel lien, l'appelant invoque les nombreuses plaintes reçues par le ministère de l'Environnement concernant la décharge Keele Valley. Selon lui, le nombre élevé de plaintes montre que la situation de beaucoup d'autres membres du groupe proposé, sinon tous, est semblable vis-à-vis de l'intimée. Cette dernière, pour sa part, estime que le fait que [TRADUCTION] « 150 personnes aient porté plainte en sept ans rend peu probable que 30 000 personnes aient subi une atteinte à la jouissance de leur propriété » (jugement de la Cour divisionnaire, p. 479-480). L'intimée cite également le jugement de la Cour d'appel de l'Ontario (à la p. 264), qui a refusé de reconnaître l'existence de questions communes parce que

> [TRADUCTION] [d]ans des circonstances comme celles relatées dans la déclaration, on s'attendrait à des preuves de l'existence d'un groupe de personnes luttant pour que

complaints, such as, a history of "town meetings", demands, claims against the no fault fund, [and] applications to amend the certificate of approval. . . .

The respondent is of course correct to state that implicit in the "identifiable class" requirement is the requirement that there be some rational relationship between the class and common issues. Little has been said about this requirement because, in the usual case, the relationship is clear from the facts. In a single-incident mass tort case (for example, an airplane crash), the scope of the appropriate class is not usually in dispute. The same is true in product liability actions (where the class is usually composed of those who purchased the product), or securities fraud actions (where the class is usually composed of those who owned the stock). In a case such as this, however, the appropriate scope of the class is not so obvious. It falls to the putative representative to show that the class is defined sufficiently narrowly.

The requirement is not an onerous one. The representative need not show that everyone in the class shares the same interest in the resolution of the asserted common issue. There must be some showing, however, that the class is not unnecessarily broad — that is, that the class could not be defined more narrowly without arbitrarily excluding some people who share the same interest in the resolution of the common issue. Where the class could be defined more narrowly, the court should either disallow certification or allow certification on condition that the definition of the class be amended: see W. K. Branch, *Class Actions in Canada* (1996), at para. 4.205; *Webb v. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 389 (S.C.J.) (claim for compensation for wrongful dismissal; class definition overbroad because included those who could be proven to have been terminated for just cause); *Mouhteros v. DeVry Canada Inc.* (1998), 41 O.R. (3d) 63 (Gen. Div.) (claim against school for misrepresentations about marketability of students after graduation; class

l'on donne suite à leurs plaintes, comme des « réunions municipales », des revendications, des demandes adressées au fonds d'indemnisation sans égard à la responsabilité [et] des demandes de modification du certificat d'autorisation . . .

20 L'intimée a bien sûr raison d'affirmer que l'exigence d'un « groupe identifiable » englobe implicitement celle d'un lien rationnel entre le groupe et les questions communes. Peu de choses ont été dites au sujet de cette exigence, car le lien ressort habituellement des faits. Dans le cas d'un délit civil touchant simultanément un grand nombre de personnes (un accident d'avion, par exemple), la délimitation du groupe n'est généralement pas contestée. Il en va de même dans le cas de poursuites fondées sur la responsabilité du fait du produit (le groupe se composant habituellement des personnes ayant acheté le produit) ou pour fraude dans le domaine des valeurs mobilières (le groupe étant généralement formé des détenteurs des actions en cause). Toutefois, en l'espèce, la composition du groupe n'est pas aussi évidente. Il incombe au représentant proposé d'établir que le groupe est défini de manière suffisamment étroite.

21 Ce n'est pas une lourde exigence. Le représentant n'est pas tenu de montrer que tous les membres du groupe partagent le même intérêt dans le règlement de la question commune énoncée. Il doit cependant montrer de quelque manière que le groupe n'est pas inutilement large, c'est-à-dire qu'on ne pourrait lui donner une définition plus étroite sans exclure arbitrairement des personnes ayant le même intérêt dans le règlement de la question commune. Lorsque le groupe pourrait être défini plus étroitement, le tribunal devrait soit refuser la certification, soit l'accorder à la condition que la définition du groupe soit modifiée : voir W. K. Branch, *Class Actions in Canada* (1996), par. 4.205; *Webb c. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 389 (C.S.J.) (demande d'indemnité pour congédiement injustifié; la définition du groupe était trop large en ce qu'elle englobait les personnes dont on pouvait prouver qu'elles avaient été congédiées pour un motif valable); *Mouhteros c. DeVry Canada Inc.* (1998), 41 O.R. (3d) 63 (Div. gén.) (déclarations trompeuses d'une école concernant le

definition overinclusive because included students who had found work after graduation).

22 The question arises, then, to what extent the class representative should be allowed or required to introduce evidence in support of a certification motion. The recommendations of the Ontario Law Reform Commission's 1982 report on this point should perhaps be given limited weight because, as discussed above, those recommendations were made in the context of a proposal that the certification stage include a preliminary merits test: see *Report on Class Actions*, *supra*, vol. II, at pp. 422-26 (recommending that both the representative plaintiff and the defendant be required, at the certification stage, to file one or more affidavits setting out all the facts upon which they intend to rely, and that the parties be permitted to examine the deponents of any such affidavits). The 1990 report of the Attorney General's Advisory Committee is perhaps a better guide. That report suggests that "[u]pon a motion for certification . . . the representative plaintiff shall and the defendant may serve and file one or more affidavits setting forth the material facts upon which each intends to rely" (emphasis added): see *Report of the Attorney General's Advisory Committee on Class Action Reform*, *supra*, at p. 33. In my view the Advisory Committee's report appropriately requires the class representative to come forward with sufficient evidence to support certification, and appropriately allows the opposing party an opportunity to respond with evidence of its own.

23 This appears to be the existing practice of Ontario courts. In *Caputo*, *supra*, the representative brought a class action against cigarette manufacturers claiming that they had knowingly misled the public about the risks associated with smoking. In support of the certification motion, the class representative filed only a solicitor's affidavit based on information and belief. The court held that the evidence adduced by the class representative was insufficient to support certification, and that the defendant manufacturers should be allowed to examine the individual class members in order to obtain the information required to allow the court

placement de ses diplômés; la composition du groupe était trop étendue, car elle comprenait des diplômés ayant trouvé un emploi).

Il faut se demander ensuite dans quelle mesure on peut permettre ou demander au représentant du groupe de présenter des preuves à l'appui de sa demande de certification. Les recommandations de la Commission de réforme du droit de l'Ontario sur ce point, dans son rapport de 1982, ont peut-être peu de poids puisque, comme je le dis plus haut, ce rapport proposait aussi l'adoption d'un critère préliminaire du bien-fondé du recours à l'étape de la demande de certification : voir *Report on Class Actions*, *op. cit.*, vol. II, p. 422-426 (recommandant que le demandeur représentant et la partie défenderesse soient tenus, à l'étape de la certification, de produire un ou plusieurs affidavits exposant tous les faits allégués et que les parties soient autorisées à interroger les déposants). Le rapport de 1990 du comité consultatif du procureur général est peut-être une meilleure référence. Il recommande ceci : [TRADUCTION] « à l'audition de la demande de certification, [. . .] le demandeur représentant doit, et la partie défenderesse peut, signifier et déposer un ou plusieurs affidavits exposant les faits pertinents que chacun entend invoquer » (je souligne) : *Report of the Attorney General's Advisory Committee on Class Action Reform*, *op. cit.*, p. 33. Selon moi, c'est à juste titre que ce rapport exige du représentant du groupe qu'il apporte une preuve suffisante à l'appui de sa demande de certification tout en permettant à la partie adverse de produire à son tour sa propre preuve.

Telle paraît être la pratique actuelle devant les tribunaux ontariens. Dans *Caputo*, précité, le représentant a intenté un recours collectif contre des fabricants de cigarettes, alléguant que ces derniers avaient sciemment trompé le public au sujet des risques associés à la cigarette. À l'appui de la demande de certification, le représentant du groupe n'a déposé que l'affidavit d'un avocat établi sur la foi de renseignements tenus pour véridiques. La cour a estimé que la preuve offerte ne justifiait pas la certification du recours collectif et que les défendeurs devraient être autorisés à interroger les membres du groupe individuellement pour obtenir

to decide the certification motion. The "primary concern", the court wrote, is "[t]he adequacy of the record", which "will vary in the circumstances of each case" (p. 319).

In *Taub v. Manufacturers Life Insurance Co.* (1998), 40 O.R. (3d) 379 (Gen. Div.), the representative sought to bring a class action on behalf of the residents in her apartment building, alleging that mould in the building was exposing the residents to health risks. The representative provided no evidence, however, suggesting that the mould had been found anywhere but in her own apartment. The court wrote (at pp. 380-81) that "the CPA requires the representative plaintiff to provide a certain minimum evidentia[ry] basis for a certification order" (emphasis added). While the *Class Proceedings Act, 1992* does not require a preliminary merits showing, "the judge must be satisfied of certain basi[c] facts required by s. 5 of the CPA as the basis for a certification order" (p. 381).

I agree that the representative of the asserted class must show some basis in fact to support the certification order. As the court in *Taub* held, that is not to say that there must be affidavits from members of the class or that there should be any assessment of the merits of the claims of other class members. However, the *Report of the Attorney General's Advisory Committee on Class Action Reform* clearly contemplates that the class representative will have to establish an evidentiary basis for certification: see Report, at p. 31 ("evidence on the motion for certification should be confined to the [certification] criteria"). The Act, too, obviously contemplates the same thing: see s. 5(4) ("[t]he court may adjourn the motion for certification to permit the parties to amend their materials or pleadings or to permit further evidence"). In my view, the class representative must show some basis in fact for each of the certification requirements set out in s. 5 of the Act, other than the requirement that the pleadings disclose a cause of action. That latter requirement is of course governed by the rule that a pleading should not be struck for failure to dis-

l'information nécessaire afin qu'il puisse être statué sur la demande. Selon la cour, [TRADUCTION] « Il est essentiel de disposer d'un dossier adéquat », ce qui « varie en fonction des circonstances de chaque espèce » (p. 319).

24 Dans *Taub c. Manufacturers Life Insurance Co.* (1998), 40 O.R. (3d) 379 (Div. gén.), la représentante voulait intenter un recours collectif au nom des locataires de l'immeuble qu'elle habitait. Elle alléguait que de la moisissure compromettait la santé des occupants. Toutefois, elle n'avait présenté aucune preuve indiquant que de la moisissure avait été détectée ailleurs que dans son propre appartement. La cour dit, p. 380-381, que [TRADUCTION] « la Loi exige que le demandeur représentant offre un minimum d'éléments probants à l'appui de la demande de certification » (je souligne). Bien que la *Loi de 1992 sur les recours collectifs* n'exige pas une preuve préliminaire du bien-fondé du recours, [TRADUCTION] « le juge doit être convaincu de l'existence de certains faits de base exigés par l'art. 5 de la Loi, pour rendre une ordonnance de certification » (p. 381).

25 Je conviens que le représentant du groupe défini doit établir un certain fondement factuel pour la demande de certification. Comme le dit la cour dans *Taub*, cela ne signifie pas qu'il faut des affidavits des membres du groupe ou qu'il faut un examen au fond des demandes d'autres membres du groupe. Cependant, le rapport précité du comité consultatif du procureur général envisageait manifestement que le représentant du groupe serait tenu d'étayer sa demande de certification (à la p. 31) : ([TRADUCTION] « la preuve à l'appui de la demande devrait se limiter aux critères [de certification] »). De toute évidence, c'est ce que prévoit la Loi au par. 5(4) (« [l]e tribunal peut ajourner la motion en vue de faire certifier le recours collectif afin de permettre aux parties de modifier leurs documents ou leurs actes de procédure ou d'autoriser la présentation d'éléments de preuve supplémentaires »). À mon sens, le représentant du groupe doit établir un certain fondement factuel pour chacune des conditions énumérées à l'art. 5 de la Loi, autre que l'exigence que les actes de procédure révèlent une cause d'action. Cette

close a cause of action unless it is "plain and obvious" that no claim exists: see Branch, *supra*, at para. 4.60.

26 In my view the appellant has met his evidentiary burden here. Together with his motion for certification, the appellant submitted some 115 pages of complaint records, which he obtained from the Ontario Ministry of Environment and Energy and the Toronto Metropolitan Works Department. The records of the Ministry of Environment and Energy document almost 300 complaints between July 1985 and March 1994, approximately 200 complaints in 1995, and approximately 150 complaints in 1996. The Metropolitan Works Department records document almost 300 complaints between July 1983 and the end of 1993. As some people may have registered their complaints with both the Ministry of Environment and Energy and the Metropolitan Works Department, it is difficult to determine exactly how many separate complaints were brought in any year. It is sufficiently clear, however, that many individuals besides the appellant were concerned about noise and physical emissions from the landfill. I note, further, that while some areas within the geographical area specified by the class definition appear to have been the source of a disproportionate number of complaints, complaints were registered from many different areas within the specified boundaries. I conclude, therefore, that the appellant has shown a sufficient basis in fact to satisfy the commonality requirement.

27 I cannot conclude, however, that "a class proceeding would be the preferable procedure for the resolution of the common issues", as required by s. 5(1)(d). The parties agree that, in the absence of legislative guidance, the preferability inquiry should be conducted through the lens of the three principal advantages of class actions — judicial economy, access to justice, and behaviour modification: see also *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (2d) 453 (Div. Ct.); compare British Columbia *Class Proceedings Act*, s. 4(2) (listing factors that court must consider in

dernière exigence est régie bien sûr par la règle qu'un acte de procédure ne devrait pas être radié parce qu'il ne révèle pas de cause d'action à moins qu'il soit [TRADUCTION] « manifeste et évident » qu'il n'y a lieu à aucune réclamation : voir Branch, *op. cit.*, par. 4.60.

J'estime que l'appelant s'est acquitté de son obligation au chapitre de la preuve. Il a joint à la motion les dossiers des plaintes déposées, totalisant quelque 115 pages, obtenus du ministère de l'Environnement et de l'Énergie de l'Ontario et du Service des travaux publics de la Communauté urbaine de Toronto. Les dossiers du ministère documentent près de 300 plaintes formulées entre juillet 1985 et mars 1994, environ 200 plaintes en 1995 et environ 150 plaintes en 1996. Les dossiers du Service des travaux publics contiennent près de 300 plaintes déposées entre juillet 1983 et la fin de l'année 1993. Comme certaines personnes peuvent avoir adressé leur plainte à la fois au ministère de l'Environnement et de l'Énergie et au Service des travaux publics, il est difficile de déterminer précisément le nombre de plaintes distinctes déposées au cours d'une année. Il est suffisamment clair, toutefois, que de nombreuses autres personnes que l'appelant ont déploré le bruit et les rejets physiques provenant de la décharge. Je remarque par ailleurs que, même si un nombre disproportionné de plaintes paraissent provenir de certaines parties du territoire décrit dans la définition du groupe, des habitants de nombreux autres secteurs compris dans ce territoire ont porté plainte. Je conclus donc que l'appelant a établi un fondement factuel suffisant à l'appui de l'existence de questions communes.

Toutefois, je ne peux conclure que « le recours collectif est le meilleur moyen de régler les questions communes », comme l'exige l'al. 5(1)d). Les parties conviennent que, en l'absence de paramètres établis par le législateur, la question du meilleur moyen est fonction des trois principaux avantages du recours collectif : l'économie de ressources judiciaires, l'accès à la justice et la modification des comportements : voir aussi *Abdool c. Anaheim Management Ltd.* (1995), 21 O.R. (2d) 453 (C. div.); comparer avec la *Class Proceedings Act* de la Colombie-Britannique, par. 4(2) (énumérant les

assessing preferability). Beyond that, however, the appellant and respondent part ways. In oral argument before this Court, the appellant contended that the court must look to the common issues alone, and ask whether the common issues, taken in isolation, would be better resolved in a class action rather than in individual proceedings. In response, the respondent argued that the common issues must be viewed contextually, in light of all the issues — common and individual — raised by the case. The respondent also argued that the inquiry should take into account the availability of alternative avenues of redress.

The report of the Attorney General's Advisory Committee makes clear that "preferable" was meant to be construed broadly. The term was meant to capture two ideas: first the question of "whether or not the class proceeding [would be] a fair, efficient and manageable method of advancing the claim", and second, the question of whether a class proceeding would be preferable "in the sense of preferable to other procedures such as joinder, test cases, consolidation and so on": *Report of the Attorney General's Advisory Committee on Class Action Reform*, *supra*, at p. 32. In my view, it would be impossible to determine whether the class action is preferable in the sense of being a "fair, efficient and manageable method of advancing the claim" without looking at the common issues in their context.

The Act itself, of course, requires only that a class action be the preferable procedure for "the resolution of the common issues" (emphasis added), and not that a class action be the preferable procedure for the resolution of the class members' claims. I would not place undue weight, however, on the fact that the Act uses the phrase "resolution of the common issues" rather than "resolution of class members' claims". As one commentator writes:

> The [American] class action [rule] requires that the class action be the superior method to resolve the "controversy." The B.C. and Ontario Acts require that the class proceeding be the preferable procedure for the resolution of the "common issues" (as opposed to the entire controversy). [This] distinctio[n] can be seen as creating a lower

facteurs à considérer pour décider si le recours collectif est la meilleure procédure). Pour le reste, cependant, l'appelant et l'intimée diffèrent. Dans sa plaidoirie devant notre Cour, l'appelant a soutenu que le tribunal doit examiner les questions communes seulement et se demander si le recours collectif plutôt que des recours individuels est le meilleur moyen de régler les questions communes considérées isolément. L'intimée a rétorqué que les questions communes doivent être analysées en contexte, compte tenu de l'ensemble des questions en litige — communes et individuelles. Elle soutenait par ailleurs qu'il fallait tenir compte de l'existence d'autres moyens d'obtenir réparation.

28 Le rapport précité du comité consultatif du procureur général indique clairement qu'il faut donner une interprétation large au « meilleur moyen ». L'expression vise à exprimer deux idées : Premièrement, [TRADUCTION] « le recours collectif est-il un moyen juste, efficace et pratique de faire progresser l'instance? » Deuxièmement, le recours collectif est-il [TRADUCTION] « préférable aux autres procédures que sont la jonction ou la réunion d'instances, la cause type, etc.? » (*Report of the Attorney General's Advisory Committee on Class Action Reform*, *op. cit.*, p. 32) Il est impossible, selon moi, de décider si le recours collectif est préférable en ce sens qu'il est un « moyen juste, efficace et pratique de faire progresser l'instance », sans examiner les questions communes dans leur contexte.

29 La Loi comme telle exige seulement, bien sûr, que le recours collectif soit la meilleure procédure pour « régler les questions communes » (je souligne), et non qu'il s'agisse de la meilleure procédure pour régler les réclamations des membres du groupe. Cependant, je n'accorderais pas une trop grande importance au fait que la Loi emploie l'expression « régler les questions communes », et non « régler les demandes des membres du groupe ». Comme le dit un observateur :

> [TRADUCTION] La [règle américaine] pertinente exige que le recours collectif soit le moyen le plus approprié de régler le « litige ». Les lois de la Colombie-Britannique et de l'Ontario disent que le recours collectif doit être le meilleur moyen de régler les « questions communes » (par opposition au litige tout entier). [Cette] différenc[e]

threshold for certification in Ontario and B.C. than in the U.S. However, it is still important in B.C. and Ontario to assess the litigation as a whole, including the individual hearing stage, in order to determine whether the class action is the preferable means of resolving the common issues. In the abstract, common issues are always best resolved in a common proceeding. However, it is important to adopt a practical cost-benefit approach to this procedural issue, and to consider the impact of a class proceeding on class members, the defendants, and the court.

peut sembler établir un test moins exigeant en Ontario et en Colombie-Britannique qu'aux États-Unis. Toutefois, il demeure important en Colombie-Britannique et en Ontario d'apprécier le litige globalement, y compris l'étape de l'examen des demandes individuelles, afin de décider si le recours collectif est le meilleur moyen de régler les questions communes. En théorie, il vaut toujours mieux régler les questions communes dans une instance commune. Toutefois, pour trancher cette question de procédure, il importe de recourir à une analyse pratique tenant compte des coûts et des avantages et de prendre en considération l'incidence d'un recours collectif sur les membres du groupe, les défendeurs et le tribunal.

See Branch, *supra*, at para. 4.690. I would endorse that approach.

Voir Branch, *op. cit.*, par. 4.690. Je souscris à cette analyse.

30 The question of preferability, then, must take into account the importance of the common issues in relation to the claims as a whole. It is true, of course, that the Act contemplates that class actions will be allowable even where there are substantial individual issues: see s. 5. It is also true that the drafters rejected a requirement, such as is contained in the American federal class action rule, that the common issues "predominate" over the individual issues: see *Federal Rules of Civil Procedure*, Rule 23(b)(3) (stating that class action maintainable only if "questions of law or fact common to the members of the class predominate over any questions affecting only individual members"); see also British Columbia *Class Proceedings Act*, s. 4(2)(a) (stating that, in determining whether a class action is the preferable procedures, the court must consider "whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members"). I cannot conclude, however, that the drafters intended the preferability analysis to take place in a vacuum. There must be a consideration of the common issues in context. As the Chair of the Attorney General's Advisory Committee put it, the preferability requirement asks that the class representative "demonstrate that, given all of the circumstances of the particular claim, [a class action] would be preferable to other methods of resolving these claims and, in particular, that it would be preferable to the use of individual proceedings" (emphasis added): M. G. Cochrane, *Class Actions: A Guide to*

Sur la question de la meilleure procédure, il faut donc examiner l'importance des questions communes par rapport à l'ensemble des revendications. Certes, la Loi prévoit que le recours collectif est autorisé même lorsqu'il existe d'importantes questions individuelles : voir l'art. 5. Il est vrai également que, contrairement au législateur fédéral américain, le législateur ontarien n'a pas retenu l'exigence que les questions communes « prévalent » sur les questions individuelles : voir *Federal Rules of Civil Procedure*, règle 23b)(3) (le recours collectif ne peut être autorisé que si [TRADUCTION] « les questions de droit ou de fait communes aux membres du groupe prévalent sur les questions qui ne touchent que des membres individuels »); voir aussi la *Class Proceedings Act* de la Colombie-Britannique, al. 4(2)a) (pour décider si le recours collectif est la meilleure procédure, le tribunal doit se demander [TRADUCTION] « si les questions de fait ou de droit communes aux membres du groupe prévalent sur les questions qui ne touchent que des membres individuels »). Je ne peux cependant conclure que le législateur a voulu que cette analyse s'effectue dans l'abstrait. Les questions communes doivent être analysées en contexte. Comme le dit le président du comité consultatif du procureur général, la question de la meilleure procédure exige que le représentant du groupe [TRADUCTION] « établisse que compte tenu de toutes les circonstances propres à une demande donnée, le recours collectif est la meilleure procédure pour régler la demande et qu'il est préférable, particulièrement, aux recours

the Class Proceedings Act, 1992 (1993), at p. 27.

I think it clear, too, that the court cannot ignore the availability of avenues of redress apart from individual actions. As noted above, the preferability requirement was intended to capture the question of whether a class proceeding would be preferable "in the sense of preferable to other procedures such as joinder, test cases, consolidation and so on": see *Report of the Attorney General's Advisory Committee on Class Action Reform*, *supra*, at p. 32; see also Cochrane, *supra*, at p. 27; M. A. Eizenga, M. J. Peerless and C. M. Wright, *Class Actions Law and Practice* (loose-leaf), at para. 3.62 ("[a]s part of the determination with respect to preferability, it is appropriate for the court to review alternative means of adjudicating the dispute which is before it"). In my view, the preferability analysis requires the court to look to all reasonably available means of resolving the class members' claims, and not just at the possibility of individual actions.

I am not persuaded that the class action would be the preferable means of resolving the class members' claims. Turning first to the issue of judicial economy, I note that any common issue here is negligible in relation to the individual issues. While each of the class members must, in order to recover, establish that the Keele Valley landfill emitted physical or noise pollution, there is no reason to think that any pollution was distributed evenly across the geographical area or time period specified in the class definition. On the contrary, it is likely that some areas were affected more seriously than others, and that some areas were affected at one time while other areas were affected at other times. As the Divisional Court noted, "[e]ven if one considers only the 150 persons who made complaints — those complaints relate to different dates and different locations spread out over seven years and 16 square miles" (p. 480). Some class members are close to the site, some are further away. Some class members are close to other possible sources of pollution. Once the common issue is seen in the

individuels » (je souligne) : M. G. Cochrane, *Class Actions : A Guide to the Class Proceedings Act, 1992* (1993), p. 27.

31 Il est clair par ailleurs que le tribunal ne peut négliger l'existence d'autres moyens que les recours individuels d'obtenir réparation. Comme je le précise plus haut, la loi exige que le recours collectif soit le meilleur moyen de régler les questions communes c'est-à-dire [TRADUCTION] « préférable aux autres procédures que sont la jonction ou la réunion d'instances, la cause type, etc. » : *Report of the Attorney General's Advisory Committee on Class Action Reform*, *op. cit.*, p. 32; voir aussi Cochrane, *op. cit.*, p. 27; M. A. Eizenga, M. J. Peerless et C. M. Wright, *Class Actions Law and Practice* (feuilles mobiles), par. 3.62 ([TRADUCTION] « pour décider si le recours collectif est le moyen préférable, le tribunal peut examiner les autres moyens de régler le litige »). J'estime que le tribunal, dans l'analyse du meilleur moyen, doit examiner tous les moyens raisonnables offerts pour régler les demandes des membres du groupe, et non seulement la possibilité de recours individuels.

32 Je ne suis pas convaincue que le recours collectif est le meilleur moyen de régler les réclamations des membres du groupe. En ce qui concerne d'abord l'économie de ressources judiciaires, je note que toute question commune en l'espèce est négligeable par rapport aux questions individuelles. Même si chaque membre du groupe doit, pour obtenir réparation, prouver que la décharge Keele Valley a produit la pollution physique et sonore, il n'y a aucune raison de croire que la pollution a frappé uniformément le territoire délimité et pendant toute la période visée par la définition du groupe. Au contraire, il est probable que certains secteurs aient été touchés plus gravement que d'autres et que différentes parties du territoire aient été frappées à différents moments. Comme l'indique la Cour divisionnaire, [TRADUCTION] « [m]ême si l'on ne tient compte que des 150 personnes qui ont déposé des plaintes, celles-ci se rapportent à des dates différentes sur sept ans et à des endroits différents sur 16 milles carrés » (p. 480). Certains habitent à proximité de la

context of the entire claim, it becomes difficult to say that the resolution of the common issue will significantly advance the action.

décharge, d'autres plus loin. Certains habitent à proximité d'une autre source possible de pollution. Une fois la question commune considérée dans le contexte global de la demande, il devient difficile d'affirmer que le règlement de la question commune fera progresser substantiellement l'instance.

33 Nor would allowing a class action here serve the interests of access to justice. The appellant posits that class members' claims may be so small that it would not be worthwhile for them to pursue relief individually. In many cases this is indeed a real danger. As noted above, one important benefit of class actions is that they divide fixed litigation costs over the entire class, making it economically feasible to prosecute claims that might otherwise not be brought at all. I am not fully convinced, however, that this is the situation here. The central problem with the appellant's argument is that, if it is in fact true that the claims are so small as to engage access to justice concerns, it would seem that the Small Claims Trust Fund would provide an ideal avenue of redress. Indeed, since the Small Claims Trust Fund establishes a no-fault scheme, it is likely to provide redress far more quickly than would the judicial system. If, on the other hand, the Small Claims Trust Fund is not sufficiently large to handle the class members' claims, one must question whether the access to justice concern is engaged at all. If class members have substantial claims, it is likely that they will find it worthwhile to bring individual actions. The fact that no claims have been made against the Small Claims Trust Fund may suggest that the class members claims are either so small as to be non-existent or so large as to provide sufficient incentive for individual action. In either case access to justice is not a serious concern. Of course, the existence of a compensatory scheme under which class members can pursue relief is not in itself grounds for denying a class action — even if the compensatory scheme promises to provide redress more quickly: see *Rumley v. British Columbia*, [2001] 3 S.C.R. 184, 2001 SCC 69, at para. 38. The existence of such a scheme, however, provides one consideration that must be taken into account when

Autoriser le recours collectif en l'espèce ne favoriserait pas non plus l'accès à la justice. L'appelant fait valoir que les demandes des membres du groupe pourraient être si modestes qu'il ne vaudrait pas la peine pour eux d'intenter des recours individuels. Dans bien des cas, il s'agit effectivement d'un risque réel. Comme je le dis plus haut, un des avantages importants du recours collectif est de répartir les frais fixes de justice entre tous les membres du groupe et de rendre financièrement possibles des poursuites qui, autrement, n'auraient pas pu être engagées. Toutefois, je ne suis pas totalement convaincue que ce soit le cas en l'occurrence. La faille principale dans le raisonnement de l'appelant est la suivante : s'il est en fait vrai que les demandes sont tellement modestes que la question de l'accès à la justice se pose, l'indemnisation par le fonds créé pour ce type de réclamations est le mode de réparation idéal. En effet, comme il s'agit d'un programme d'indemnisation sans égard à la responsabilité, le fonds devrait permettre d'obtenir réparation bien plus rapidement que par voie judiciaire. Si, en revanche, le fonds d'indemnisation n'est pas assez important pour les demandes des membres du groupe, on peut se demander si la question de l'accès à la justice se pose. Si leurs réclamations sont substantielles, elles valent la peine d'intenter des recours individuels. Le fait qu'aucune réclamation n'a été présentée au fonds pourrait indiquer que les demandes des membres du groupe sont soit modestes au point d'être non existantes, soit suffisamment importantes pour qu'il vaille la peine d'engager des instances individuelles. Dans l'un ou l'autre cas, l'accès à la justice n'est pas une préoccupation sérieuse. Bien sûr, l'existence d'un fonds permettant aux membres du groupe de demander une indemnisation n'est pas en soi un motif de refuser un recours collectif — même si le régime d'indemnisation peut permettre d'obtenir réparation plus rapidement : *Rumley c. Colombie-Britannique*,

assessing the seriousness of access-to-justice concerns.

For similar reasons I would reject the argument that behaviour modification is a significant concern in this case. Behavioural modification may be relevant to determining whether a class action should proceed. As noted in *Western Canadian Shopping Centres*, *supra*, at para. 29, "[w]ithout class actions, those who cause widespread but individually minimal harm might not take into account the full costs of their conduct, because for any one plaintiff the expense of bringing suit would far exceed the likely recovery". This concern is certainly no less pressing in the context of environmental litigation. Indeed, Ontario has enacted legislation that reflects a recognition that environmental harm is a cost that must be given due weight in both public and private decision-making: see *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, and *Environmental Protection Act*. I am not persuaded, however, that allowing a class action here would serve that end. If individual class members have substantial claims against the respondent, we should expect that they will be willing to prosecute those claims individually; on the other hand if their claims are small, they will be able to obtain compensation through the Small Claims Trust Fund. In either case, the respondent will be forced to internalize the costs of its conduct.

I would note, further, that Ontario's environmental legislation provides other avenues by which the complainant here could ensure that the respondent takes full account of the costs of its actions. While the existence of such legislation certainly does not foreclose the possibility of environmental class actions, it does go some way toward addressing legitimate concerns about behaviour modification: see *Environmental Bill of Rights, 1993*, ss. 61(1) (stating that "[a]ny two persons resident in Ontario who believe that an existing policy, Act, regulation or instrument of Ontario should be

[2001] 3 R.C.S. 184, 2001 CSC 69, par. 38. L'existence d'un tel régime est une considération dont il faut tenir compte dans l'évaluation de la gravité du problème d'accès à la justice.

Pour des motifs similaires, j'écarte l'argument 34
selon lequel la modification du comportement est une considération importante en l'espèce. La modification comportementale peut être pertinente aux fins de décider si un recours collectif devrait être autorisé. Comme le note *Western Canadian Shopping Centres*, précité, par. 29, « [s]ans recours collectifs, des personnes qui causent des préjudices individuels mineurs mais répandus pourraient négliger le coût total de leur conduite, sachant que, pour un demandeur, les frais d'une poursuite dépasseraient largement la réparation probable ». Il s'agit certainement d'une préoccupation tout aussi pressante dans le contexte d'un litige environnemental. D'ailleurs, l'Ontario a adopté une loi reconnaissant que le préjudice environnemental est un coût dont il faut dûment tenir compte dans la prise de décisions publiques et privées : voir la *Charte des droits environnementaux de 1993*, L.O. 1993, ch. 28, et la *Loi sur la protection de l'environnement*. Je ne suis pas convaincue, cependant, qu'autoriser le recours collectif en l'espèce contribuerait à la réalisation de cet objectif. Si les membres du groupe ont des demandes substantielles à faire valoir contre l'intimée, ils devraient être disposés à intenter des recours individuels; par contre, si leurs demandes sont minimes, ils seront en mesure d'obtenir réparation en s'adressant au fonds d'indemnisation créé à cette fin. Dans l'un ou l'autre cas, l'intimée devra absorber les coûts occasionnés par son comportement.

Je signale de plus que la législation ontarienne 35
de l'environnement offre au plaignant d'autres moyens d'obliger l'intimée à tenir pleinement compte du coût de ses actes. Bien que l'existence de cette législation n'écarte certainement pas la possibilité de recours collectifs dans le domaine de l'environnement, elle apaise jusqu'à un certain point les craintes légitimes au chapitre de la modification comportementale : voir la *Charte des droits environnementaux de 1993*, par. 61(1) (« [d]eux personnes qui résident en Ontario et qui croient qu'une politique, une loi, un règlement ou un acte

amended, repealed or revoked in order to protect the environment may apply to the Environmental Commissioner for a review of the policy, Act, regulation or instrument by the appropriate minister") and 74(1) (stating that "[a]ny two persons resident in Ontario who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Commissioner for an investigation of the alleged contravention by the appropriate minister"); *Environmental Protection Act*, s. 14(1) (stating that "[d]espite any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect"); s. 172(1) (stating that "[w]here a person complains that a contaminant is causing or has caused injury or damage to livestock or to crops, trees or other vegetation which may result in economic loss to such person, the person may, within fourteen days after the injury or damage becomes apparent, request the Minister to conduct an investigation"); and s. 186(1) (stating that "[e]very person who contravenes this Act or the regulations is guilty of an offence").

de l'Ontario devrait être modifié, abrogé ou révoqué en vue de protéger l'environnement peuvent demander au commissaire à l'environnement de faire examiner par le ministre compétent la politique, la loi, le règlement ou l'acte en question »), et par. 74(1) (« [d]eux personnes qui résident en Ontario et qui croient qu'il y a eu contravention à une loi, à un règlement ou à un acte prescrits peuvent demander au commissaire à l'environnement de faire mener par le ministre compétent une enquête sur la contravention reprochée »); *Loi sur la protection de l'environnement*, par. 14(1) (« [m]algré toute autre disposition de la présente loi et des règlements, nul ne doit rejeter un contaminant dans l'environnement naturel ou permettre ou faire en sorte que cela se fasse lorsqu'un tel acte cause ou causera vraisemblablement une conséquence préjudiciable »); par. 172(1) (« [s]i une personne se plaint qu'un contaminant cause ou a causé des lésions à du bétail, ou des dommages à des récoltes, à des arbres ou à une autre végétation qui peuvent occasionner une perte financière à cette personne, elle peut, dans les quatorze jours après que les lésions ou les dommages deviennent apparents, demander au ministre de faire une enquête »); et par. 186(1) (« [q]uiconque enfreint la présente loi ou les règlements est coupable d'une infraction »).

36 I conclude that the action does not meet the requirements set out in s. 5(1) of Ontario's *Class Proceedings Act, 1992*. Even on the generous approach advocated above, the appellant has not shown that a class action is the preferable means of resolving the claims raised here.

Je conclus que l'instance ne satisfait pas aux exigences du par. 5(1) de la *Loi de 1992 sur les recours collectifs* de l'Ontario. Même selon l'interprétation libérale préconisée plus haut, l'appelant n'a pas établi que le recours collectif est le meilleur moyen de régler les demandes en l'espèce.

37 I should make one note on the scope of the holding in this case. The appellant took pains to characterize this case as raising the issue of whether Ontario's *Class Proceedings Act, 1992* permits environmental class actions. I would not frame the issue so broadly. While the appellant has not met the certification requirements here, it does not follow that those requirements could never be met in an environmental tort case. The question of whether an action should be permitted to be prosecuted as a class action is necessarily one that turns on the

Je tiens cependant à préciser la portée du présent arrêt. L'appelant a cherché à caractériser la question à trancher comme étant la question de savoir si la *Loi de 1992 sur les recours collectifs* de l'Ontario autorise les recours collectifs dans le domaine de l'environnement. Je ne formulerais pas la question de manière aussi générale. Même si l'appelant n'a pas rempli les conditions de la certification, cela ne veut pas dire que ces conditions ne pourraient jamais être réunies dans le contexte de la responsabilité environnementale. Ce

facts of the case. In this case there were serious questions about preferability. Other environmental tort cases may not raise the same questions. Those cases should be decided on their facts.

The appeal is dismissed. There will be no costs to either party.

Appeal dismissed.

Solicitors for the appellant: McGowan & Associates, Toronto.

Solicitor for the respondent: H. W. O. Doyle, Toronto.

Solicitors for the interveners Friends of the Earth, West Coast Environmental Law Association and Canadian Association of Physicians for the Environment: Sierra Legal Defence Fund, Toronto.

Solicitors for the intervener the Environmental Commissioner of Ontario: McCarthy Tétrault and David McRobert, Toronto.

Solicitor for the intervener the Law Foundation of Ontario: Mark M. Orkin, Toronto.

sont nécessairement les faits de l'espèce qui déterminent s'il y a lieu d'autoriser un recours collectif. Dans la présente affaire, il y avait des doutes sérieux quant à la question de la meilleure procédure. Une autre affaire de délit civil environnemental pourrait ne pas soulever les mêmes doutes. Il conviendra de statuer alors en fonction des faits.

38 Le pourvoi est rejeté. Il n'y a pas d'adjudication des dépens.

Pourvoi rejeté.

Procureurs de l'appelant : McGowan & Associates, Toronto.

Procureur de l'intimée : H. W. O. Doyle, Toronto.

Procureurs des intervenants Ami(e)s de la terre, West Coast Environmental Law Association et Association canadienne des médecins pour l'environnement : Sierra Legal Defence Fund, Toronto.

Procureurs de l'intervenant le Commissaire à l'environnement de l'Ontario : McCarthy Tétrault et David McRobert, Toronto.

Procureur de l'intervenante La fondation du droit de l'Ontario : Mark M. Orkin, Toronto.

EXHIBIT 3

Selected Product Liability Class Proceedings

Case	**Product at Issue**	**Court's View on Certification**
Nantais v. Telectronics Proprietary (Canada) Ltd.	Pacemaker leads	"In my respectful view this is the kind of case for which the *Class Proceedings Act, 1992* was designed. The stupendous financial burden of a case such as this would consume all or almost all of the proceeds of the judgment of any single plaintiff. The defendants (if responsible) would likely therefore be insulated from any of these claims because of financial consequences alone. It is only by spreading out the cost that the members of the class have any chance of success. Not only is the class proceeding preferable, it is the only procedure whereby the members of the class will have any real access to the courts."[1]
Wilson v. *Servier Canada Inc*.	Prescription drug – Ponderal	Product liability cases generally lend themselves to class proceeding treatment… In my view, the policy objectives underlying the *CPA* will be furthered if this action is certified as a class proceeding. Access to justice is extended to persons who may have been injured by a defective product. There would be a very significant cost to any claimant pursuing an individual claim given the tremendous complexities of evidence and issues, the extensive scientific and medical evidence and discoveries, and the protracted nature of the litigation. But for a class proceeding, the defendants (if responsible) would in all probability be effectively isolated from the individual claims. Judicial economy and efficiency will be achieved if the common issues are resolved in a single proceeding. It is only by spreading and sharing the cost through the scale efficiencies of a class action that members will have an

[1] *Nantais v Telectronics Proprietary (Canada) Ltd*. (1995), 129 DLR (4th) 110 at para 8 (Gen Div).

Case	Product at Issue	Court's View on Certification
		opportunity to resolve their claims. Moreover, by resolving common issues through a single proceeding, the danger of producing inconsistent results through a multiplicity of trials is avoided. Finally, the policy objective of behaviour modification is fostered through a class proceeding. If a drug is defective and liability attaches to a manufacturer or seller, a significant incidental result is that the pharmaceutical industry is more likely to take greater care in the development and testing of new products to ensure their safety before marketing them… The *CPA's* goal has been described as inhibiting "misconduct by those who might ignore their obligations to the public". The *CPA* serves to assist in regulating the pharmaceutical industry for an important public policy objective through class proceedings commenced in the private sector.[2]
Harrington v. Dow Corning Corp.	Breast implants	"However, from an individual plaintiff's perspective, a class proceeding is probably the only way she might have a chance to press her claim effectively. The cost of a risk assessment in resources of time and money would burden even the plaintiff with extremely serious injuries. For those with more modest claims the cost would be prohibitive."[3]
Anderson v. St. Jude Medical Inc.	Silzone brand - mechanical heart valves	As far as other patients are concerned, I have already found that a trial of the common issues will significantly advance the proceedings for the approximately 1200 members of the composite class of symptomatic and asymptomatic patients. It is implicit in my reasons that judicial economy should be achieved by certification of these issues. It is also likely to increase access to justice for

[2] *Wilson v Servier Canada Ltd.* (2000), 50 OR (3d) 219 at paras 118, 124-126 (citations omitted).
[3] *Harrington v Dow Corning Corp*., 2000 BCCA 605 (CanLII) at para 66.

Case	Product at Issue	Court's View on Certification
		members of the class whose physical condition might inhibit them from commencing separate proceedings. Nor, given the nature of the businesses carried on by the defendants, do I accept that the withdrawal of the Silzone devices is sufficient to make the objective of behavioural modification irrelevant.[4]
Wheadon v. Bayer Inc.	Prescription Drug – Baycol	"Certifying the present action will promote access to justice. Aggregating the claims of all proposed class members will help to make it economic for all of these Plaintiffs to pursue a remedy against Bayer. Denying certification would mean that many or all of them would be without any remedy. Certifying this action is in the public interest, and will promote behaviour modification of actual and potential wrongdoers. Attaching liability to the manufacturer of a defective drug helps to create appropriate incentives for the manufacture of safer drugs in the future for the benefit of society as a whole. In this way, private litigation yields public benefits."[5]
Walls v. Bayer Inc.	Prescription Drug – Baycol	"… While it is undoubtedly true that there will be many, and many important, individual issues which may have to be decided before this case is finally resolved, there clearly are common issues of importance which can be decided once only, thus avoiding possible inconsistency in fact-finding and enhancing judicial economy and the advancement of the litigation. As well, certification of the proceeding will clearly promote access to justice. This case, as with so many products liability cases, is one where the cost of litigating a claim on an individual basis will, if it does not exceed the

[4] *Anderson v St. Jude Medical Inc.* (2003), 67 OR (3d) 136 (Sup Ct J) at para 69.
[5] *Wheadon v Bayer Inc.*, 2004 NLSCTD 72 at paras 146, 148.

Case	Product at Issue	Court's View on Certification
		amount of the likely recovery, be wholly disproportionate to it. In the result a requirement for individual claims as distinct from class proceedings would substantially inhibit, if not wholly prohibit, the ability of individuals to advance what they consider to be a justifiable claim."[6]
Serhan v. Johnson & Johnson Corp.	SureStep Meters and strips used by diabetics	"I am satisfied that a class proceeding is appropriate for the determination of the common issues I have accepted for the purposes of certification and far preferable to individual trials. Their resolution in favour of the plaintiffs should determine both the issue of liability and the amount to be paid to class members. If they are decided in favour of the defendants, that will very likely dispose of the litigation for class members other than any who may claim to have suffered serious injury to their health. There is no evidence at present that there are any such members. Each of the three objectives of the CPA - access to justice, judicial economy and behavioural modification - would be served by certifying the action on the basis of these common issues."[7]
Boulanger v. Johnson & Johnson Corp.	Prescription Drug – Prepulsid	"I agree with the representative plaintiff's submissions. It is preferable that the common issues be resolved by a class action. Doing so promotes the three policy objectives of the CPA as set out by the representative plaintiff. In my opinion, the common issues identified above address fundamentally important issues in this action, and their resolution will significantly move the litigation forward. While individual issues of proximate causation, allocation of fault and damages would remain,

[6] *Walls v Bayer Inc.*, [2006] 4 WWR 720 at paras 69-70 (MBQB).
[7] *Serhan v Johnson & Johnson Corp.* (2004), 72 OR (3d) 296 at para 68 (Sup Ct J).

Case	Product at Issue	Court's View on Certification
		their resolution will be considerably influenced by the outcome of the common issues trial…"[8]
Heward v. Eli Lilly	Prescription Drug-Zyprexa	"I believe it is obvious that the resolution of the common issues will substantially advance the proceeding, one way or another. Access to justice and judicial economy will be furthered by permitting issues of fundamental importance to the claims of each class member to be decided at a single trial."[9]
Peter v. Medtronic, Inc./Robinson v. Medtronic, Inc.	Defibrillators/ Pacemaker leads	"I have concluded that, taking into account the importance of the common issues in relation to the claim as a whole, a class proceeding is the preferable procedure. The resolution of the common issues will significantly advance the claim. A class proceeding will, I believe, be manageable."[10]
Lambert v. Guidant Corp.	Pacemakers	"Access to justice will be served in that few class members are likely to be willing to accept the risks and expense of litigating the complex issues of fact and law against these defendants. Behavioural modification is also very much a goal that would likely be achieved by proof of the serious factual allegations on which the claims of class members are based. The third of the statutory objectives - judicial economy - will be achieved by a single trial of the common issues with or without the "monstrous complexity" to which defendants' counsel have referred."[11]
LeFrancois v. Guidant Corp.	Defibrillators	"It has been repeatedly stated in previous cases that the question of the preferable procedure must be viewed from the perspective of the objectives of the CPA — access to justice,

[8] *Boulanger v. Johnson & Johnson Corp*. (2007), 40 CPC (6th) 170 at para 53 (Ont Sup Ct J).
[9] *Heward v Eli Lilly*, 2007 CanLII 2651 at para 112 (ON SC) [*Heward*].
[10] *Peter v Medtronic, Inc*., 2007 CanLII 53244 at para 118 (ON SC).
[11] *Lambert v. Guidant Corp.* (2009), 72 CPC (6th) 120 at para 127 (Ont Sup Ct J).

Case	Product at Issue	Court's View on Certification
		judicial economy and behavioural modification. Each of the objectives weighs heavily in favour of certification in this case. Access to justice will be strongly served in view of the likely length and cost of individual proceedings, the class members' medical conditions, and the inequality between their financial resources and those of the defendants. Each of the proposed representative plaintiffs has stated in an affidavit that he or she could not afford to finance an individual action. Judicial economy will also be advanced by the resolution of the common issues — one way or the other — at a single trial. Given the allegations of conspiracy to commit an unlawful act, and of deliberate concealment, by the defendant, a decision in favour of the plaintiffs would have value in achieving behavioural modification…"[12]
Tiboni v. Merck Frosst	Prescription Drug - Vioxx	"As in other cases of products liability, a successful prosecution of this case as a class proceeding would act as a warning, and as a deterrent, to manufacturers and vendors tempted to subordinate their obligations to consumers– and their duties of care – to their profit-making objectives. To that extent, the continuation of the proceeding as a class action will accord with the objective of behavioural modification."[13]
Pollack v. Advanced Medical Optics	Contact Lens Solution	"There is a superficial attractiveness to promoting judicial economy by"parking" this action pending the outcome of *Chalmers*. This is particularly the case in light of AMO's concession that it will not re-litigate the liability findings made by the British Columbia Supreme Court. I have concluded, however, that it would not be just to stay this action, that

[12] *LeFrancois v. Guidant Corp.* (2008), 56 CPC (6th) 268 at paras 90-91(Ont Sup Ct J).
[13] *Tiboni v. Merck Frosst* (2008), 295 DLR (4th) 32 at para 110 (Ont Sup Ct J).

Case	Product at Issue	Court's View on Certification
		it would not promote the fair and expeditious determination of all the issues between the parties and that judicial economy will in fact be promoted by allowing both actions to proceed, subject to judicious case management."[14]
Schick v. Boehringer Ingelheim (Canada) Ltd	Prescription Drug - Mirapex	"A class action is well-suited to the resolution of products liability cases and a number of drug cases have been certified. There is no dispute that a class proceeding is the preferable procedure for the resolution of the common issues and that it will promote the goals of the *C.P.A.* In this case, a class action will facilitate the important goal of *access to justice* by enabling class members, who are vulnerable due to their medical conditions, to undertake litigation that would be daunting on an individual basis. It will achieve *judicial economy* through common resolution of factual and legal issues, thereby avoiding duplication of fact-finding and legal analysis. It will, if successful, bring about *behaviour modification* by ensuring that the risks of medications are properly disclosed to consumers and that appropriate precautions are taken in the manufacturing and marketing of drugs."[15]
Goodridge v. Pfizer Canada Inc.	Prescription Drug - Neurontin	"The gravamen of the Plaintiffs' remaining claim, for which there is undoubtedly some basis in fact, is a product's liability and failure to warn claim. This claim is based on the allegations that the Defendants' sold a drug that causes harm by its harmful side effects or by the drug's failure to provide therapeutic relief for its many off-label uses. After the reduction of claims, the gravamen of the Plaintiffs' claim resembles other products

[14] *Pollack v. Advanced Medical Optics,* 2011 ONSC 1966 at para 71.
[15] *Schick v Boehringer Ingelheim (Canada) Ltd.,* 2011 ONSC 1942 (CanLII) at paras 74-76 (citations omitted).

Case	Product at Issue	Court's View on Certification
		liability claims that have been found suitable for certification as a class proceeding. In my opinion, a class proceeding is the preferable procedure for the determination of the common issues of the Plaintiffs' remaining claim, and I am satisfied that the Plaintiffs' action satisfies the preferable procedure criterion of the test for certification."[16]
Parker v. Pfizer Canada Inc.	Prescription Drug - Champix	"I am satisfied that notwithstanding there will be individual issues trials to determine causation and whether the individual's damages are compensable, a class action is the preferable procedure for the Class members' claims. I see no other practicable alternative and a class proceeding will achieve: (a) some judicial economy; (b) behaviour modification (if Pfizer Canada is found to be negligent); and (c) otherwise unavailable access to justice for those harmed. In deciding that Mr. Parker's action satisfies the preferable procedure criterion, I simply note, but do not rely on, the fact that product liability actions have been certified by Canadian courts…"[17]
Brousseau v. Laboratoires Abbott ltée.	Prescription Drug - Biaxin	The common issues identified in paragraphs 5.1 to 5.14 of the re-amended motion permits to identify if there is or not a fault by Abbott about the dangers of the drug Biaxin and the lack of an adequate warning. At the first answer which concerns each member of the group, will be added, if in the affirmative, that of the determination of a causal connection between the fault and the damages. It is only after this second determination that it will be necessary to verify the validity or not of the damages claimed.

[16] *Goodridge v. Pfizer Canada Inc.,* 2010 ONSC 1095 at paras 133-134.
[17] *Parker v. Pfizer Canada Inc.*¸2012 ONSC 3681 at paras 124-5 (citations omitted), leave to Div. Ct denied, 2012 ONSC 6604.

Case	**Product at Issue**	**Court's View on Certification**
		In the Court's view, the legal syllogism that the applicants put forward establishes, at this stage, *prima facie* the elements that may constitute the responsibility of Abbott, namely its fault, the presence of damages potentially suffered by each member of the group and a causal connection between the fault and the damage that each has alleged. (*Translation from French to English*)

EXHIBIT 4

1	Michel B.	Losing my mother of 93 years in the explosion of her house xxxx boul. Veterans. total loss of the family patrimony complete destruction of the family residence suffering mental anguish. physical loss. Loss of enjoyment of life. psychological suffering	harassment by the media. Would not liberate her body even if I positively identified her.
2	Sylvain B.	Loss of work for 4 days, I work at Bestar.	
3	Lily R.	The loss of my brother Martin R., 48, who was the musi-cafe. I'm deeply affected this was the only brother I had. This action can not replace the sudden loss, but maybe bring a balm on our troubles. Thank you for your moral support.	
4	Patrick B.	My car total loss. fear and anxiety. trouble sleeping because during the day, we spend the day at the Lambrequin shop, to see my girlfriend's parents. my girlfriend cries often, she knew a lot of people because she comes from there.	rage and incomprehension when faced with all this. Feeling of being deceived by the federal government, who should be there for us. They are there for the big pockets, and the little people are left alone as usual.
5	Manon R.	Loss of my brother Martin R. currently work stoppage	
6	Guillaume L.	Loss of my brother-in-law Martin R. currently work stoppage	
7	Élie R.	Loss of my son Martin R.	
8	Helene M.	Inn closed.. loss of income ... many cancellations ... 3 fridges and 1 freezer in the trash .. because of a lack of electricity ... evacuation for 9 days, loss of enjoyment of property ... inhalation of toxic products .. bronchitis laryngithe pump cortisone .. .. drugs .. hospital doctor appointments .. etc. .. etc.etc ..	
9	Laurence T.	My parents were owners of the Labrequin building, thank you god I have not lost my parents, however, I had very sentimental things there, my father had made me a table, worth approx. 3000.00 and chairs, light fixtures and my birthday present. my parents need my support more than ever, I am there for them, so I must take leave of absence from work. I saw a lot of anger and stress, I find it hard to sleep, I'm afraid to lose my world that I love, my fear is compulsive.	

10	Céline T.	The loss of our commercial building (with 4 residential units with 3 tenants who have died and commercial space operated by me and my spouse.) Located at xxxx Frontenac, Lac-Megantic. My building is a total loss because it is very close to the railroad. The result of this tragedy is directly attributable to the company MMA. Following this disaster we lost (property, wages, business, tenants and friends, as well as several prejudices) and more ns ns ending up withinpredictable debts and a serious insecurity for our future. Ns how we feel after this tragedy from the long night of July 6, the rage, anger, sadness, wounds, scars that will take a long time to heal our heart is ashes like our downtown. I am proud to be "Megantiquoise" of Lac-Megantic need to keep hope for a future. We will never forget this tragedy the loss of our citizens and the loss of our downtown. God has nothing to do, it could have not happened. The MMA train destroyed my city and killed fifty people. There is no more painful wound. slower to heal than that which accompanies the rage. The LAMBREQUIN my shop was the jewel of downtown we built with all our love, I was a passionate about my business, when I put the key Friday night I never would think not go back. We are consoled that we still have our two daughters and our family but ns missing people know it is very difficult for us. What precious memories gone in ash and tears running down our face, our city is dead. All this is an unheard of sadness and would not be. I hope that many will have to enroll in this class action.	
11	MARIO B.	I lost a cousin (Stephane B.), my cousin's husband (Jean-Pierre R.), a work colleague, friend and president of the union (Yves B.), another friend (Martin R.) and several acquaintances. 'I also lost three days of work. In addition, i have lost our town center and our quietude and all the inconvenience that this event will cause us for several years. it will never be the same.	
12	Anne D.	evacuated from July 6 to 11, trauma following the explosion	
13	Francis G.	evacuated from July 6 to 11, trauma following the explosion	
14	Emmanuelle F.	evacuated from July 6 to 11, trauma following the explosion, had to consult a psychologist	
15	Richard C.	My brother has died in this tragedy and I suffer terribly from his absence and all my family members. I lost a job and my wife too.	
16	Raccompagnement du lac, Pierre B.	Loss of income of bars of the city center. individual studies that we do not accompany	
17	Jacques-Bernard R.	Intense stress from a fear of losing of my two daughters who escaped the red zone (Veterans Boulevard) where they were with their mother. Insomnia since the tragic night. I can only sleep for a few hours a day, about four. I also suffered loss of enjoyment of life: I do not use my boat that has its home port in the marina of Lac-Megantic.	The stress endured by my two daughters stress that escaped the fire that tragic night worries me. I fear for the future even if one of them meets a psychologist.
18	Michelle G.	The public library in Lake megantic was burned in this tragedy and I was working there. So I had a lot of stress because I thought I had lost my job and I wanted at all costs to find another. However, a few days later, after completing my application for unemployment, my work called me to tell me that I still had my job. A great relief.	

19	Angéline V.	For me, the smoke was so dense that it stung my throat. Evacuated for 5 days with a return outside household and cars all affected by smoke that leaves a film printing as it had gathered on the house and the cars very difficult thing to clean support against those people who take my cousin	
20	Marianne R.	Loss of employment, I worked at Korvette at xxxx Frontenac Lac-Megantic. Loss of pay. Loss of sleep and stress because by the explosion and fire.	under these conditions to wait two weeks for unemployment is more stress and a large monetary loss.
21	Jean François R.	I am owner with my wife Manon L. of the Residence Marianites GP (private residence for seniors) situated at xxxx Champlain Street, Lac-Megantic. The fire of July 6, 2013 being located approximately 100 meters away damaged the building for an unknown value at this time (no adjuster can access the area for now). Being situated in the red zone, we had to relocate all of our 17 residents and lay off our employees. The future seemed bleak, some residents and employees have said we will not be able to return. As the decontamination will be effected very close to the residence, we may have to wait a few years before returning to the building.	All our support to those afflicted. We must unite and stay strong. Thank you a Mtre Larochelle for this initiative. Good luck!
22	Lucille G.	Extreme fear and loss of home for a week. Much more fearful.	
23	René G.	Stress caused by the loss of use of his wife and loss of sleep because of Fire and explosions	monetary loss (earnings of the wife) causes tension and stress
24	Josée V.	Working with Madeleine D., I lost my job. My salary is used to pay for the studies of my son who is not entitled to loans and scholarships. Pending the relocation of the office, I was very stressed, not wanting to have to say to my 17 year old son that he could not leave for Thetford Mines in September. Add sleep problems, I suffered from migraines and my blood pressure was high, something thatnever happened to be before.	
25	Genevieve B.	Pain because of the loss of people I knew. Much more anxious than before. My daughter is also disturbed and often speaks about trains and fire. Loss of our home for a week without electricity so foodwent to waste. Very traumatic event.	
26	Bernard B.	Much sadness from the loss of people and our city. We welcome five people from our family in our home for a week.	
27	Manon L.	I am owner with my husband Jean Francois R. Residence Marianites. GP (private residence for seniors) situated at xxxx Champlain Street, Lac-Megantic. The fire of July 6, 2013 being located approximately 100 meters to damage the building for an unknown value this area (no adjuster who can not venture to now). Being situated in the red zone, we had to relocate all of our 17 residents and lay off our employees. The future seemed bleak, some residents and employees have said we will not be able to return. As the decontamination will be effected very close to the residence, we may have to wait a few years before reintroducing the masonry.	Thank you for your initiative
28	Caroline L.	Job loss due to the presence of my job in the red zone	

29	J.R. Luc G.	Evacuation of home, job loss in the city center ("buildings") complication for work, emotive disorders, loss of work of my two daughters etc. and especially great anger!	Thank you Maître Larochelle
30	Pierre O.P.	Tenant living in the red zone/food/garden / death of my brother / souvenirs and archives in the basement of my building ? / etc.	I will make another entry on behalf of my employer from archives office and rental office also in the red zone, general and artistic director of the Cultural Committee Megantic
31	Comité culturel, Mégantic	The cultural committee Megantic is a tenant that occupies an office in the building of the town hall. Loss of enjoyment of the workplace / relocation, etc.. The cultural committee Megantic is an NPO since 1980 organizing season of professional entertainment arts of the stage to the auditorium Montignac. Its sales counter is established at Jean Coutu also in the red zone.	I have already registered in a personal capacity, loss of enjoyment of my residence
32	Karl R.	Loss of friend(s). Loss of our city. 1 week without our house. Intense stress. my 4 year old daughter is traumatized. A lot of sadness. loss of all our food (meat of deer and moose, trout, daily groceries.	
33	Jean-François L.	Loss of my uncle Martin R. Traumatized by what I saw very early on Saturday morning	
34	Gaetane L.	fear, anxiety, stress of having been evacuated from my home, loss of my family and my friends that I will never see again. a lot of difficulty to have a normal life and I am obligated to make a big detour for my work. it has disrupted my life every day. thank you for taking care of my testimony	
35	Yvano B.	the stress of having been evacuated the loss of my friends who's gone forever I hardly eat anymore since these events difficulty focusing, head in the clouds, hard to drive my car because of a fear of jumping or being startled the slightest noise around me and my sleep is not the same thank you ===	
36	Steve R.	Post traumatic shock ... Direct threat of death since I was very near the tragedy ... loss of enjoyment of life	My child, Yuri R. was present with me at the derailment ...
37	Solange B.	I have a lot of difficulty to sleep because I hear all night the infernal noise of the work center city.The slightest noise startled me. being barely 10 minutes (walk) from downtown, I have to make a detour by car to do my grocery. So I have to spend more money for gasoline.	
38	Rene L.	Evacuated 2 days	
39	Marc G.	I had to leave my home for 4 days, cough and sore head, must go around the city center by a detour leads to more expenses for transport because services are further than the sector of Fatima, felt stress	
40	Edith G.	stress, head aches, problems displacements, multiple inconveniances, losses of enjoyment	
41	Lucille V-B.	head aches, stress, displacement problems fatima sector, fear of our disaster, heart ailments	
42	Jean-Guy G.	head aches, stress, displacement problems fatima sector, fear of a disaster, heart ailments, evacuated several days, precarious health	
43	Marc G.	evacuated several days with all the inconveniences, health, loss of income etc..	
44	Sylvie C.	I have lived the loss of my brother Real C. in this tragedy.	I am very affected and devastated

45	Cathy H.	On July 6, 2013 I lost my uncle Real C. and several of my friends. I felt great sadness and anger. Life is not the same, this has shown me that life can be short and should often tell people that we love them. Because many people leave us so suddenly!	
46	Thérèse C.	I want to tell you that I have lost my son Real C. .. I am very morally affected ... I find it unfair that this happened ... I wishing for very good results for this action .. thank you very much	
47	Zoran B.	stress, evacuated secteur Fatima, 4 days, loss of sleep, being away from services, loss of enjoyment of life	
48	Merisa B.	stress, evacuated secteur Fatima, 4 days, loss of sleep, being away from services, loss of enjoyment of life	
49	Sumeja B.	stress, evacuated secteur Fatima, 4 days, loss of sleep, being away from services, loss of enjoyment of life	
50	Rejean C.	death of my brother Real-my home-evacuation problem of consentration - Fatigue-no longer watching tv!	
51	Neira B.	stress, evacuated secteur Fatima, 4 days, loss of sleep, being away from services, loss of enjoyment of life	
52	Ana B.	stress, evacuated secteur Fatima, 4 days, loss of sleep, being away from services, loss of enjoyment of life	
53	Miralem F.	stress, evacuated secteur Laval 4 days, loss of sleep, being away from services, loss of enjoyment of life	
54	Merisa F.	stress, evacuated secteur Laval 4 days, loss of sleep, being away from services, loss of enjoyment of life	
55	Osman F.	stress, evacuated secteur Laval 4 days, loss of sleep, being away from services, loss of enjoyment of life	
56	Aldijana F.	stress, evacuated secteur Laval 4 days, loss of sleep, being away from services, loss of enjoyment of life	
57	Simon C.	loss of my brother Real C.	
58	Sonia P.	The loss of my brother in law Real C. in tragedy, fear of the future facing the train ect.	
59	Jérémy C.	The loss of my uncle Real C, sleep disorder, fear of fire ect.	
60	Mélissa C.	The loss of my uncle Real C. Trouble sleeping, afraid that the train will pass in front of my home ect	
61	Lisette. B.	Lost a son	
62	Claude B.	Lost a son	
63	Marc-Éric O.	Loss of my favourite uncle Real C., a lot of sadness because I lost my oncle. often crying for no reason, trouble sleeping, more irritable ect	
64	Sébastien B.	Lost a brother	

65	Amélie O.	The loss of my Uncle Real C. more emotional fear of the train, if it returns in front of my house, most irritable, trouble sleeping, afraid of noises ect	
66	Fabienne N.	stress, evacuation secteur Laval 4 jours, loss of sleep, services are now far, loss of enjoyment of life	
67	Micheline F.	stress, evacuation secteur Laval 2 jours, loss of sleep, services are now far, loss of enjoyment of life	
68	Cinthia L.	My brother is one of the missing persons	
69	Lucille L.	Loss of my son Jean-Guy V.	
70	Pierette L.	my home is in the Red Zone, I can not have access to any of my personal belongings and appliances. I am very discouraged, because the information is very difficult to enter. I also lost a niece in the tragedy.	
71	Richard C.	my home is in the Red Zone, I can not have access to any of my personal belongings and appliances. I am very discouraged, because the information is very difficult to enter. I also lost a niece in the tragedy.	
72	Francois-Louis R.	Psycological damage, the loss of my brother-Jean-Guy V. and lost a week of work and decreased work schedual	
73	Jacques B.	Psychological stress because my girlfriend lives on Bonin street and I had to evacuate while thinking she was in the fire. Second loss of pay for a full week	
74	Catherine P.P.	Job loss because of derailment	
75	Monique B.	Evacuation loss of perishable goods stress, insomnia, fatigue, loss of enjoyment of life imbalance of medication	
76	Steve B.	Loss of my brother Stéphane B.	
77	Karine B.	Since the 6th of july we are extremely stressed. I have many nightmares, I'm scared of fire. At night, we hear the workers in the town center and we jump at every small noise asking ourselves if it will happen again. I have anxiety. We had to be evacuated from our home for 4 days, we stayed with my in-laws, my husband, myself and our 2 children. we are in the secteur Fatima, we can't go anywhere without taking our car because there is nothing left in our area (grocery, stores, etc.)	My son is scared of every little noise. He asks me what is it mother? and I have to reasure him because he is very scared. But to reassure a child when one is scared themselves is not easy.
78	Michel C.	very touched by the loss of my brother Real C. because of a derailment at lac- megantic, It has upset and marked the rest of my life, I have nightmares ... I miss him! plus I've lost alot of friends in this tragedy ...!	
79	Huguette B.	My boat is presently inaccessible at the marina of Lac-Megantic and will be contaminated by the oil following the derailment of the train.	Good Luck!

80	Yves B.	The survival of my business, Multicopie Sérigraphe-Imprimeur is highly threatened, as it is situated in the center of Lac-Megantic. I no longer have access to my office and my equipment, so I have a lot of difficulty in meeting the needs of my clients. In addition, my job and that of my employees are uncertain at this time as is our financial security. Besides the fact that the quality of life for my family and the families of my employees is affected by the loss of many lives and the insecurity of our environment ..	
81	Jean-Francois C.	I lost an uncle with whom I spent a lot of time (Real C.) and many acquaintances in this tragedy. I will never forever be affected by this event and the fact that our city is demolished devastated, annihilated ... there are no words to describe all this ...	
82	Caroline M.	Disaster victim for 1 week with my 2 daughters Roxanne T. and Joannie. Job losses caroline joannie working at Metro Marche on rue Frontenac and loss of employment for Roxanne who worked at the Bar challenge on Frontenac Street.	
83	Rejean C.	The loss of my brother Real! Fatigue, lack of energy, insomnia, sadness, anger	
84	Patrick L.	My brother, Jean-Guy V., died in the tragedy. I waited until 22 July 2013 before we knew officially that he was identified by the coroner. I have not been able to work during the week that followed the events since the factory where I work (Masonite corp.) Had to close because it is situated in the industrial sector (Villeneuve Street, Lac-Megantic). A friend died in the tragedy, Kathy C. In addition, I lost my city center.	My wife and I were present during the explosion that happened around 4:30 AM. (The big mushroom) We ran to escape the heat of the flames. We feared for our lives. My mother had to be evacuated from her house because she lives on Dollard Street, at the height of the church. We walked the streets of Lac-Megantic to find her that night, we never found my brother or Kathy.
85	Audrey B.	My brother in law, Jean-Guy V., has died in the explosion. My childhood friend and current best friend, Kathy C., died in the explosion. My city where I grew up and the Veterens park no longer exists. It will take years before the rebuild everything.	My husband and I have were present during the big explosion that occurred on the night of July 6 to 4:30 AM. We were on the bike path towards the OTJ. We ran to escape the heat of the explosion. The deflagration was pushing us in the back. We searched the city all night to find our families and friends. We have not found Jean-Guy, or Kathy. It was a real war zone. I have these graven images in my memory all my life.
86	Valentin T.	I am a volunteer firefighter for the city of Lake-Drolet. much trouble sleeping for several weeks. many pictures and sounds engraved in my head for the rest of my life.	I am a firefighter for the city of Lake-Drolet. On the morning of July 6 has arrived in Lake Megantic-we got the order to evacuate the person who was near the cite. with my truck # 605 Lake-Drolet I went up and down the streets with my siren on to evacuate the people from their homes. I was returning to the 4 stop next to the funeral co-op, about 200 feet away from the tanks when there was a big explosion, fire came over me, I still entent my fire chief tell me radio to save myself as has as I can. (I WAS AFRAID OF DYING) thank you for your understanding. Valentin T. ...
87	Louis G.	The building with the Salon de Barbier at xxxx Frontenac Street is no longer accessible. Loss of income and enjoyment of my office for certain amount of time	
88	François J.	Loss of our business, loss of enjoyment of the lake, loss of personal property,	
89	Alexandre M.	We are the distribution company for water (Labrador and Aqua Beauce) in the region of the MRC du Granit. This is our entrepise that ditribues water from source to each company and residential customers located in the Red Zone of Lac Megantic . loss of each etablissement downtown Lac-Megantic including Metro Valiquette means a big loss in terms of our business	

90	Carole M.	lost my job, loss of income, loss of purchasing power, loss of enjoyment of life …	
91	Marius, Bilodeau	loss of enjoyment of life	
92	Émilie, Castonguay	Following the derailment of the train, I lost my job at Metro (Food store)	Thank you
93	Simonne C.	Job loss because of derailment	No income
94	Julie L.	I lost my job at the Dollarama, lost my home temporarily because it is located in the red zone for an indefinite amount of time	
95	Chantal R.	loss of employment and loss of my car because of derailment	
96	Kim S.	post traumatic stress	
97	Jacinthe P.	Loss of appetite. Nightmares. emotional problems.	Claims made to home insurance: 60 635,00 $ amount received from insurance : 41 000,00 $financial loss: 19 635,00 $
98	France C.	Lost my uncle Réal C. and also several people that I knew in the derailment of the train in Lac-Megantic. I no longer recognize the city where I grew up. my beautiful city center is destroyed, I'm very distraught by all of this.	
99	Diane B.	Loss of my daughter Jo-Annie L.. Moral damages	
100	Luce R.	Total loss of my business IDfolle. Stress	
101	Richard A.	Psychological trauma	
102	Sara F.	Psychological: stress, anxiety. constant resounding in my head of the sound of the fire or the gas burning. My daughter was also anxious in seeing her house burn down. Concretely, in my everyday life, to bring my son to daycare which is next to the cinema in Lac Megantic, i now have to take a detour, which is a lot more expensive and a lot longer. since the tragedy, so I have not been able to bring him because of my financial means. I sincerely thing that reumbursement would be right and normal in this situation resulting from the tragedy.	it is obvious that those people who have lost their homes, their family and those who are unable to return to their homes because they are too close to the site deserve to be compensated (they will be fromt he government) However, we often forget all the other citizens who, because of this tragedy, now have, in their lives, terrible situations which they have no choice but to live with and deal with their own troubles and like me, dont necessarily have the financial means to do it. We are also very affected by this drama for everyday reasons and situations which will last years it seems. Who will help us?
103	Jacques R.	I felt major psychological distress, a loss of enjyment of life and problems sleeping and loss of a work colleague.	
104	Jean-louis R.	I own a piece of land of 160 acres along the river and I can no longer enjoy the shores of the river in safety, since there are all kinds of toxic and dangerous products along the river. This land is near the center of town. About 2 km . the smells and the sticky mud of toxic products make it impossible to access since the events of july 6. We are now the 27 of july and no clean up has begun in this section and yet on the TV we see 2 large containers of thick black product, the same that is near us. Therefore the damage is serious, nausiating and toxic.	
105	Ghislain C.	Our damage is that we lost our daughter in the catastrophe and she left behind two children, 9 and 11 who are now orphans.	
106	Patrick R.	Apartment very damaged by the fire and heat..... broken windows... I am just behind the funeral home Jacques et fils... we had a lot of heat.. I had to close by Ebay shop that Ive been running for 4 years. Post traumatic shock.... fear during storms or fireworks or fires (camp fires) ... I hope this will be resolved.	

107	Marie-Claude B.	I froze during the incident J'ai figée lors de l'incident. L'appartement est très habimer par le feu et la chaleur... vitre cassé... Je suis juste derrière le salon funéraire jacques et fils... ont a eu chaud... Choc post tromatique... peur lors des orages et lors de la chaleur du soleil sur mon visage. J'espère que ça va se régler.	
108	Jean-Yves F.	I am the co-owner of the Maché Metro Alain et Valiquette located in the city-center of Lac-Mégantic. Seeing that the grocery store is located in the red zone, our business is not accessible therefore we are losing business since the date of the tragedy and we need to find a location to move our grocery store.	
109	Karine F.	Loss of enjoyment of my apartment, since I a very close to the red zone. I want to move because there is too much construction noise etc. nightmares, anxiety flashbacks, damage to my car, psychological trauma	
110	Rene G.	Stress, evacuation 7 days, my street is a construction zone, no longer calm, loss of park and leisure area, no more fishin in the river, insomnia, work happening 24h per day and it's not done, sickness 12 days, antibiotics, detour of 10 km every day, loss of city center, stores, etc.	contents of fridge 200 dollars and freezer 300 dollars
111	Patricia M.	Damages: Loss of food. telephone broken, possible also the functionning of the dryer Flowers on my property burned. Increase in automobile circulation than before XXX+++ Cannot go out onto my balcony during the day without being sollicited by unknown persons everywhere, other than Lac Megantic. I am located on the first floor. Odor of oil and gaz, sewage and dirt for weeks in the air. Odor of rotten food coming from fridges and freezers in the red zone. View is a black wall for weeks. Very invasive journalists, photographers and tourists on my street and property. Constant coming and going of unknown persons without permission from owners on the first floor. Loss of sleep Went to the emergency 2 times. increased consumption of medication. Constant image in my mind of everything I had seen and heard over minimum of 3 weeks, for example, screaming of dying people. Black ash-rain falling on me. Black smoke that irritated by throat for at least 3 weeks. I was witness of the events before the first respondents and firefighters arrived on site.	I slept on army camp beds for 6 days, haivng osteoperosis and arthritis and fybromyalgia, I was then unable to do physical activities for weeks : for example, even walking. I was unable to communicate in person or by telephone with by family (my daughters and grandchildren) who live in the same city as me. Secteur Fatima for several days. Socially isolated, difficult to access my usual lifestyle because most of my activities woul dbe located in the red zone. At the end of Champlain street after the tracks. I can no longer do my errands by foot. Grocery store is too far from my house. I am on social insurance with limited revenue. Can no longer go to the library to borrow books for free, books to read or cultural movies. Many of the people I know had to be relocated somewhere else and I cannot find them for the moment. Much sadness from the massive loss of people I knew who have died.
112	Serge P.	Total loss of our home	loss of all our property, souvenirs and other
113	Denis P.	My residence at xxx. My wife and I were evacuated during the night of the 6th and 7th of july 2013 following the derailment of the train in Lac Megantic and at this time, the 30 july 2013, it is still impossible to return to live in our home and we do not know when it will be possible to return. All perishable goods at our home were lost as well as the enjoyment of our home and we now must live like nomads since that day. My wife is now being treated for post traumatic shock because of our evacuation.	Other telephone number to reach us because our home phone is not operational : 819-xxx-xxx
114	Thérèse L.	total loss of our house and our belongings	post traumatic stress
115	Daniel B.	Part of my clientele curent and potential is in the region of Megantic. All current projects are suspended and its therefore impossible for me to work in the region since all businesses put their prjects on hold, even those that are ongoing.	

116	Denise G.	I lost my place of business for the last 13 years, the library. All my work tools, created over the last 13 years. All my personal objects that were there, photos, gifts, cards. I was also awakened in the middle of the night to see my center of town in flames, I left my house with my family in pyjamas without shoes, not knowing what was going to happen everything burned. Since then I jump at the sound of thunder, me, who liked to sit and watch it before. I wake up with a start if a truck passes or a car makes a noise, I cry for my city that I no longer recognize and that I always loved. for its beauty and more than anything I cry for all the people who died, all the people I knew closely or not. those people I looked for in the crowds, only to remember that they are not there and will never be.	
117	Frédéric F.	Loss of all belongings in my apartment. Loss of my vehicle. Loss of my two cats. Loss of employment for 2 weeks. Loss of all my material souvenirs. Loss of enjoyment of life because of "flashbacks". "	I lived in the heart of the red zone, facing Korvette, on the the third floor. During the event, I was present. When I wanted to leave my building, I couldn't because the oil on fire had already reached the stairs. In returning to the room, the windows exploded, the fire and smoke entered the room, when I opened the window in the room overlooking the roof of the second floor, I breathed in a lot of black smoke. After getting onto the roof of the 2nd floor, I jumped to the roof of the first floor, then to the ground. both jumps were 10 to 12 feet each. Once to the ground, I ran because the oil was about 20 feet from me. I had to bend over to pass under the electrical wires that i didnt know if they were live or not. I had to leave everything behind. The only thing I was able to take was a t-shirt, pants, a pare of boots and my cellular telephone. My address no longer exists but my mail will be redirected for future communications, here is the address at my parents': xxx Waterloo, Québec J0E 2N0
118	Jacques M.	Loss of food. Loss of enjoyment of our home. Emotional shock. Physical, lack of sleep. Fear of unknown noises.	for all the members of my family Carole C., Stéphanie M., Geneviève M., Jade M. et Ambre M.
119	Liliane R.	I was evacuated, loss of enjoyment of life, moral suffereing, anger, loss of friends	
120	Julie H.	I completely lost everything. My apartment has been completely ravaged by fire. I lost all my material possessions, my souvenirs, i lost my two cats that I loved. I also lost my car which was parked on the side of the building. I was present when it happened. I woke up at 1:15 I saw the fire outside. I woke up my husband and we tried to get out by the stairs, but they were already on fire. So we had to go out the window of the room and out the roof. We jumped from two floors to escape. We were left with our pajamas. I was two months pregnant at the time of the events, so it was very difficult both physically and mentally.	Because the address on Frontenac Street no longer exists, if you need to reach me, I will leave the address to my parents. xxxx Granby, QC J2G 2J2
121	Susan B.	I lost my job in the city center of Lac-Megantic, there was a lot of incertainty and anxiety following this loss. Loss of income and the stress linked to the loss of my job, without knowing if there would be reopening the business.	

122	Lynda G.	Destruction of the routine, the points of reference and habits, nightmares, loss of food, flowers, loss of quality of life of Lynda G. Upheaval in the life of my mother, Ms. G. residing at the same address as Lynda G. and is waiting for Disease alzeimer, which was stable but fluctuating she does not want to leave the building, walk outside, no longer recognizes her daughter which she took for her mother, and not recognizing her grand son that she took to her uncle for 2 days, and stoped eating alone has lost her routine, her landmarks and lifestyle. she has many difficulties to resume her life as before the tragedy. it requires more and more support despite her daughter's efforts	
123	Sinh S.	Loss of income and loss of clientele. Store closed from July 6 to July 15. Loss presence in the food industry The store still can not reopen. a lot of cleaning. Many stress connected to this	
124	Résidence, Marianites s.e.n.c.	Following the disaster, Marianites Residence, a private residence for seniors, is affected by damage to the building, by the loss of present and future income, loss of market value and other losses, as well as moral damages to the owners, employees and residents.	We are registered as individuals Jean Francois L. and Manon R. dated 15 July 2013. Our legal counsel has advised us to do so as the name of our trade is Marianites Residence GP
125	Denise P.	I am owner of a clothing store for men and women. The shop is situated in the city center at xxxx rue Frontenac. I lost my job. And I'm waiting to relocate but no premises available. It's been three years since I opened the shop and a lot of effort and money has been invested to get a clientele, etc.. I find it very difficult that has happened to us because we have nothing. The economic situation and the loss of clientele are factors that can affect the operation of my shop. Also, there is among others, stress, anxiety, the difficulty to sleep in addition.	
126	Sylvie G.	Loss of friends. The loss of my apartment and belongings with it. Fear of loud noises at night, nightmares.	
127	Linda R.	lost my fridge and my freezer and all their contants ($ 800 loss of food), required to move out of my apartment because of contamination, nervous shock, insomnia, intense stress, a life marked by the image of the accident and people screaming and burned. Difficult to eat, think, sleep, work. Marked for life.	
128	Sylvie C.	Water dmamge in the basement, loss of food in fridge freezer and other items, loss of rental income. Relocate for 20 days. doing a lot of Km, loss of sleep, big stress, remain nervous, loss of enjoyment, still with fear always fearful feeling of being invaded by curious people, tranquility lost, lost time waiting for cleaning company and repairs to the basement ..... and other consequences	

129	Véronique Q.	I am a host family, and being evacuated, my children and me (I have 2 boys aged 15 and 17 who live with me under the Director of Youth Protection) and my daughter of 12 years old is very hard. A lot of stress for us not knowing the date to return to our home. it is difficult to adapt living with my brother (there are 9 people at his house for over 25 days) an enormous stress for the two boys who do not want to go with another family. sadness for the loss of my friends.in sum, there is mosly psychological damages that my children and i have suffered. we were reintegrated since the 7th august but my daughter doesn't sleep well, she is afraid that another explosion will happen because of the blasts. as a result, she doesn't sleep, and her mother neither. returning to a normal life is very difficult.	I want to thank you for what you are doing for all those affected by the tragedy. The material losses is one things, that we often say is replacable, but to have lived through this situation and to have lost everything or not to have lost anything has been very difficult for the members of my family. what we think to have gained really isn;t anything. thank you with all my heart from all of my little family.
130	Sylvie G.	I was employed by Korvette stores for 10 years, it was my only income. So since the events of July 6, 2013 I lost my job. I am a single person and senior 55. I find it morally difficult to have lost my job and my co-workers because we were a nice little team.	
131	Daniel H.	Loss of enjoyment of the premises (residence) Loss of enjoyment of the environment (city and vicinity) Loss of value of the residence of sleep loss (fear of the night) Big Insecurity financial stress facing the future	
132	Manon B.	Loss of enjoyment of the premises (residence) Loss of enjoyment of the environment (city and vicinity)Loss of my work (family support) Loss of value of the residence of sleep loss (fear of the night) Big Insecurity financial stress facing the future	
133	Édith L.	Loss of enjoyment of the premises (home) Loss of use of the environment (city and vicinity) Loss of friends and acquaintances Big Insecurity financial stress facing the future	
134	Louise A.	Since July 6, I am part of those people affected. I can not reintegrate my apartment. On August 8, I was attending an informal meeting with the various people in this tragedy, explaining that I could not return to where i live before June 2014 or June 2015 or perhaps ever. Since July 6, I live with my son, who lives in a municipality, St-Ludger, which is 20 minutes from Lac-Megantic. So I have to make my way to work. I stress to the idea of having to make the trip for the winter period. I live with my son with his pregnant wife, their 17-month baby and two other children my son, who just a week 2. I feel i have invaded their privacy which makes me feel very bad. I have no home, I have a constant insecurity, I wonder if I can recover my property ... I am very unhappy about this situation and it is difficult for me to relocate since the remaining apartments are either: unhealthy, overpriced or in a lamentable state. As being domiciled here for several years, I've lost friends in the disaster. I feel powerless and destabilizing has it all.	Thank you for taking the time to represent all of us who were touched in different ways but who are all affected by this sad drama. I thank you personally.
135	Suzanne B.	principally moral pain, fear of all noise if it thunders I jump and start crying. the slightest noiseI feel so bad, my heart wants to stop and even more.	
136	Michel S.	I lost my oldest son, Jimmy S. and my daughter in law Marie-Semie A. They leave behind a little girl 1 1/2 year that we must ensure her future. They lived above the Lambrequin.	

137	Sébastien B.	Anxiety for my parents and friends who have sleep disorders. Holidays were compromised and shortened.	
138	Julie A.	Lost wages: Summer Festival of Quebec = $ 800 how-to Edition $ 600 Holiday Insomnia compromised and shortened	I am a native of Lac-Megantic, my parents and many of my friends are resident.
139	Sara M.	lost my home, window exploded, debris in my house, my car with soot, Lost a job, symptoms, I always have nightmares Panic attack the night, I'm always afraid that my house on fire and I have to save myself by running ... Trauma.	
140	Nancy R.	psychological trauma inhalation of toxic smoke fear extreme insomnia	
141	Pierre T.	problem of insomnia and insecurity jumping at the slightest noise at night	symptoms are felt by the entire family
142	Olivier L.	I lived across from the MusiCafe. My home has burned completely, so I lost everything: clothes, furniture, household appliances, food and other goods in short I lost everything. I had to relocate and buy furniture, electrical appliances, as well as clothes to start a normal life. I also lost two days of work and suffered a lot of stress.	
143	Louise L.	When it exploded, I went downtown ... What I saw and heard (explosion, people screaming, collective panic, fire out of sight ...) marked me deeply. I'm having nightmares and post-traumatic stress disorder since. I dare not leave my house, I constantly crying, I jump at every sound, I momentary absences ... In addition, being in the Fatima area and having no vehicle, I feel completely isolated. Nothing is accessible by foot. This is a loss of freedom, autonomy and independence huge ... I was in the city center every day, for me, psychologically, it is a huge loss! This ... is a lot mourning!	I am a person who has generalized anxiety and had come to establish myself in Lac-Megantic only to then put me in a deep depression ... The events of July 6, have a major impact on my current psychological condition ...
144	Gaetan L.	My brother Stephane L. was among the fatalities following the derailment of the train that exploded July 6, 2013. It is very difficult for the family to grieve. In addition we do not reside in Lac-Megantic. So all the steps and information is difficult to obtain.	So we think it is normal to have a restitution for the loss of income and expenditures incurred to follow the investigation and all that comes with the death of my brother! Thank you!
145	David P.	After our dinner at Musi-Cafe that night Stepan B., Karine C. and Melissa R., three of my very close friends are still there. I was evacuated for 6 days from my home because of this tragedy. In addition, I am forcing myself to follow a therapist for moral and psychological problems (post-traumatic stress disorder). Since I practically never sleep, I was having difficulty concentrating, I have memory problems and I have alot of agression	
146	FRANCIS L.	MY BROTHER STÉPHANE L. DIED IN THIS TRAGEDY.	
147	Edith L.	loss all wood furniture, washer, dryer, and more. loss of life.	
148	Yves R.	Stress due to the loss of friends and our downtown. Uncertainty of our jobs.	We were lucky not to lose members of our family but we see the effects of 6 July. My 8 year old daughter still has nightmares of that night. From our side, the city was an important element for us and it is no longer
149	Sylvie G.	I had a chemotherapy treatment on the morning of July 5 and I passed the first night sleeping outside and evacuated for 2 days ...	
150	Denis A.	Evacuated for 2 days, the loss of friends, loss of 2 working days .... and all that follows!	

151	Sylvie C.	I have lived the loss of my brother real c. and I take care of anything with his death,,, have not returned to work since.	
152	Jérôme T	insomnia, nightmares, and anxiety state of shock at the loss of `friends` and `being present during the event.	I was on the terrace of music-cafe where I saw the derailment in progress, I ran the fastest that I could to be able to avoid the flames that blew toward me. It was a matter of seconds to avoid the worst. I `ve been was afraid for my life.
153	Pauline T.	Loss of my daughter at the MusiCafe I have two small orphan children	
154	Nancy G.	Loss of value of my house, Anxiety,	I suggest that the Government of Canada is also charged for lack of railway regulation.
155	Jocelyne B.	evacuated for 4 days	
156	Edward B.	I lost everything. I lost my home on top of having smelled the smoke at my home thank you all of you from Edouard	
157	Ginette B	evacuated from my home for 4 days	
158	Paul R.	Stress, The engouasse, insomnia, plus my son saw the latest explosion at 4:00 am and stress that caused him because he told me that he always revisits this image and can not forget it, even if he speaks about it, it returns to him every night and where we are located (home) we were over the fire and we evacuated approximately at 14:30 and we left the house for four days and whats more I missed those days I was booked to work.	
159	Gilles b.	Since this event July 6 jI have difficulty difficulty enduring everyone I've become less sociable I I hate everyone and I want to be alone Still I always see this explosion and noise that I often wake up and I jump at tiny noises. so I am not as fi was before	it's been 51 years that we are married and since July 6 I have a hard time not fighting with her, and this every day. I have changed a lot. I live 100metres from the last house on my street that was burned.
160	Eric B.	Owner of the restaurant at Loulou. The restaurant was closed on Saturday, July 6 to Tuesday, July 9 inclusive because of perimeter security. We have to throw the food due to the closure of four days and also the failure of electric current occurred during those days when the perimeter security was maintained. We have also experienced a loss of revenue for the restaurant for these four days of closure, the closure occurred during our busy season, that is to say the summer.	
161	Isabelle R.	Owner of the restaurant at Loulou. The restaurant was closed on Saturday, July 6 to Tuesday, July 9 inclusive because of perimeter security. We have to throw the food due to the closure of four days and also the failure of electric current occurred during those days when the perimeter security was maintained. We have also experienced a loss of revenue for the restaurant for these four days of closure, the closure occurred during our busy season, that is to say the summer (July).	
162	Francine B.	depressions meetings psychologists agressiviter I saw all the work in front of us and many people I knew in tragedy	
163	Charles D.	Psychological and sentimental damages. Loss of people who were close to me. the event marked my children! Loss of enjoyment of my hometown!	

164	Amanda S.	i lost my apartment cant go back am in the zone yellow and im tramtized by this i already have very bad mental health i have to stay at the le bouee as i have no place and since the tragadie i had to sleep in a highschool gym then a trailer behind teh high school ect it has caused me probs for my mental health and also for my place as due to this im homeless	its only been a month im in lac-megantic and had my place im alone here have no family to help me and this has affected me alot as downtown megantic will neve rbe the same and i dont even know if il ever be able to go back to my home its has caused me a huge impact on my health and mental health and i have gotton stollen some of my stuff in my place ect so yes i think that mma should help out the people like me that are affected by this
165	Mélissa C.L.	I suffered a loss of enjoyment of life caused by the event. Loss of employment and income directly because my lack of sleep and appetite.	
166	Gislène B.	Evacuation for 6 days, one must endure the toxic gas fumes, noise of everyday work.	
167	Pascale L.	Great panic the night of the explosion and ensuing stress for several weeks. Loss of a portion of salary for restructuring at two of my jobs. Sleep problems. As soon as I hear a noise, I jump and it worries me quickly. Loss of enjoyment of the premises where I live because I had just made the purchase of my house. Loss of value of my property because in addition to being situated in front of the railway is also about 200 meters from the explosion. And to complete given that I live very close to the yellow zone, the quality of the air we breathe worries me greatly... thinking about our state of health for years to come	Thank you for working hard for all of us. We are so grateful.
168	Thomas G.	Lost my job at Musi-Café	
169	Lucie D.	Loss of job at L'Eau Berge (cleaning lady)	
170	Christiane R.	Lost my job at Promutuel I am a person who does not have a car and I took advantage of this opportunity to do some shopping and get my medicines at the pharmacy customary jeans and take a break in veterans park before going to work and then in a few minutes everything disappears, I feel helpless and then I learned that my cousin has died in musi-cafe and acquaintances. I thought it was a dream, but no.	
171	Linda c.	death of my sister Sylvie C. at the MusiCafe July 6, 2013, stopped work (independant worker) for 5 weeks, not available for training for a second work from July 8 to August 22, 2013 meeting at the CLSC and CALLAC in Sherbrooke and seeing a psychologist	
172	François P.	my mother died she was at the Musi-Café	
173	Anne-Josée P.	Post traumatic shock after the explosion in the city center. I had to flee from my home it is in the red zone. So I witnessed the explosion . I had to relocate to 5 different places during the evacuation which lasted four weeks. Now I'm back home and I reside one house away from the disaster zone that involves a lot of stress from the sounds, smells of oil and soon the decontamination of the site.	
174	Patrice L.	Broken windows of the home, alteration of the paint in the house, cedar hedge partially destroyed, the whole family had to stay away from home for nearly two months. Loss of tranquility of the neighborhood, loss of sense of security. Must suffer the noise, the restriction of access to the home and its surroundings. Multiple losses of timefor follow-up/correspondence with public authorities, insurers and shops or need to redeem the lost objects, altered (food, refrigerators and freezers)	I expect compensation for various material and moral damages. Our way of life has been permanently altered and affected

175	Jacinthe L	The prohibition and restriction of access to my office for my clients and myself since 6 July 2013. Multiple losses of time to correspond with public authorities, additional expenses for the equipment required for my work (furniture, printer, telephone, internet ...) Need to move my office in another place difficult to access for my clients.	
176	Marie-Josée D.	Psychological distress (death of a cousin in the tragedy, worried for family members living in and around Lac-Megantic (mother, brothers, niece, cousins and little cousins and second cousins). Tragedy occurred in a place that I visit every month to visit my family and to which I am attached because I'm born and I lived there for 17 years. Certain acquaintances who are mourning at the loss of someone close to them.) Sadness, the expenses incurred (more visit my mother for support She lives alone and needed presence and psychological support so spent fuel for trips Chambly-Lac-Megantic.). inconveniances	
177	Hélène D.	Psychological distress (death of a cousin in the tragedy, worried for family members living in and around Lac-Megantic (mother, brothers, niece, cousins and little cousins and second cousins). Tragedy occurred in a place that I visit every month to visit my family and to which I am attached because I'm born and I lived there for +/- 20 years. Certain acquaintances who are mourning at the loss of someone close to them.) Sadness, the expenses incurred (more visit my mother for support She lives alone and needed presence and psychological support so spent fuel for trips Longueuil-Lac-Megantic.). inconveniances	
178	Sylvio D.	Psychological distress (death of a cousin in the tragedy, worried for my mother living near to the tragedy (Lemieux Street) and for many people I know.) Some acquaintances that are mourning at the loss of someone close to them.) Great sadness felt facing such loss of life and heritage of my city. Death of family members of the company for which I work and impact on my job. Obligation by my job to work at the scene of disaster (red zone) and be shocked, touched, Upset by the tragedy. Support to my mothe, loss of income Some weeks unemployed. inconveniances	
179	Yves D.	psychological distress (death of a cousin in the tragedy, worried for members of my family living in Lac-Megantic (mother, brothers, niece, cousins and little cousins and second cousins). Tragedy occurring in a place that I visit frequently to visit a family to which I am attached because I'm born and I lived there for + / - 20 years. Acquantances who are in mourning at the loss of someone close to them) the expenses incurred for more frequent visits to my mother to give her support and a comforting presence. inconveniances	
180	Jeffrey D.	Psychological distress: anxiety for my grandmother who lives in Lac-Megantic, as well as some members of my family as uncle and cousin.	

181	MARC-ANDRÉ C.	psychological distress for some members of the family of my girlfriend (mother, cousin, niece) who is a native of Lac-Megantic and with whom I visit regularly the region. Support for my family, my girlfriend and my children, my beautiful mother and other family members of my girlfriend. Sadness at the loss of lives and destruction of heritage and economic heart of the city of Lac-Megantic	
182	Jean P.	I've stopped working since 6 July 2013. I have an intense post-traumatic shock. It manifests as a permanent angry state.	I got out of Musi-Cafe 1 minute before the first few explosions. I had to save myself by the street Milette taking refuge in the lake up to my armpits.
183	Audrey A.	I left to work in a vineyard in Western Canada all summer, I quit my job to come and see my family and my loved ones which first cause me financial damages. I lost in the accident 5 people very close to me and several other acquaintances. In addition, my parents were affected for 48 hours and my mother's chemotherapy treatment took place July 5, so I was extremely anxious about her health. Then lately, during a meeting with a psychologist I was told that my general apathy from the events were certainly a post-traumatic shock followed by a major depression. this worries me for my school session.	I'm not looking particularly obtain financial profits of the case I express my personal testimony to give juice to the file, if you pardon the expression.
184	LAURENNE B.	office at 5050 for massotherapy all lost	
185	Alain L.	lost my sister henriette L.	
186	Jean C.	a little insomnia	Strength in numbers to make disburse the most money possible!
187	Rene C.	hello in response to the tragedy i was home at the moment of the explosion I went ouside, my wife solange was with me too. in the street because I live next to the railroad. i went to rescue my wife's son and another explosion happened I went flying in the air 4 to 5 feet and I fell on my back. at the polyvalente, the paramedics made a dressing but i have a lot of pain in my back and I have the image in my head. I was evacuated for 4 days. thank you for your attention rene	
188	Marie-Claude L	I was obligated to leave my apartment the night of the tragedy with my 3 year old son who was a witness to the disaster. That night we were at a friend of my mother's house and when the last explosion took place at 4H we went to my ex Spouses house, the father of my son, who is a firefighter. I knew that no one would be home and my baby could sleep in his things safely. but I didnt sleep at all. The next night when I put my son in his pajamas I realized that he had exema from head to toe. the next 2 days we stayed with a friend in Lac-Drolet and then with my sister up until last week when i came home but I do not feel safe because it smells of gaz and just the other corner the barrier blocks the entrance to my neighbors. ?? when I returned home I had to empty my fridge and freezer and throw everything away and wash it.	What I find hard is that I do not feel safe andI have to make my son feel the opposite . when he wakes up he is insecure. He talks about it a lot and has lost three members of his family,he knows that they are gone but I do not know if he really realizes it? He got very scared for his father and he still afraid of going to daycare because the railroad runs right beside and he talks about the train being on fire. his two little cousins were there with him but since the tragedy they lost both parents so they don't go there anymore. the other day he asked me where have they been? so ... for me it is very emotional
189	Nathalie B.	worked at Dollarama, loss of employment	
190	Diane T.	loss of emplyment at dollarama	
191	Audrey M.	loss of employment at dollarama	

192	Caroline L.	On the evening of July 5 to 6 I was at Musi to celebrate my brother-in law's birthday. We left 1 hour before the incident. my brother in law and two of my friends died. we live 500 feet of the tragedy, since that night I see a psychologist. i can't her some noises like thunder.	
193	Pierrette SH	I lost my employment at dollarama	I receive only 175.00 each week because of this derailment. I live alone and I have ot pay for my house.
194	Monelle L.	I lost my employment at dollarama	
195	Pierre B.	stress from the explosion, evacuation, loss of sleep and quality, anxiety for my health, cleaning noise, extreme nervousness of noise loss of enjoyment of my freedom to go where I want to stay strictly my services as limited mobility hernia disc and expenses of related to traveling are elevated. my status monetary on social assistance, depression.	
196	Léonce F	Loss of job, loss of income loss full of furniture and equipment necessary to my work. I also possessed a lot of antiques that I have acquired over the years and I held in my room because I am a passionate about antiques. Approximately 400 photos of buildings, sites of the city of Lake Megantic over the years until today	Following the explosion and destruction of my business I have constant anxiety, loss of appetite, sleep, nervousness. I have a lot of sadness for all business owners who have experienced the same fate as me and the tenants who lost their lives.
197	Nancy Q.	loss of income, tourism and local business, depreciation of equipment, loss of commercial building, anxiety temporary relocation, restarting, business clientele	
198	Mélyna L.	job loss dollarama and evacuation during one week	
199	Suzie L.	I HAVE TROUBLE SLEEPING , SMALL NOISE I jump, I SEE ME BURNING IN THE TRAIN, I HAVE A LOT OF STRESS FROM TRAGEDY I MUST DO TRIPLE THE distance TO GO TO MY OFFICE, I HAVE to get Massages TO MANAGE MY STRESS. I AM INJURED MENTALLY, PHYSICALLY I HAVE no MORE ENERGY. I HAVE MORE STRESS SINCE I WAS TOLD THEY WILL DESTROY MY OFFICE OR I'LL BE RELOCATED MAKES ME NERVOUS	
200	Mélissa L.	since the disaster I 've had some panic attacks when i see cars and overflowing with police officers. When I hear a siren or a train I get anxiety. I live in the Fatima area and because of this explosion the cost of gasoline has quadruple because we always take the path of the detour. before, a path that took me two minutes now takes me 15 minutes .. in addition, I will have to move because Metro bought the block where i live. this causes me aditional expenses because I do not want to leave Fatima because my daughter goes to school there..There are no very large 51/2 for rent so I was obligated to make an offer to purchase a small house just 2 rooms. if the loan is accepted I will have two rooms in order to adapt the house to my family which includes 3 childr. This is the only house that is within our means . I had not planned to move this year annee. I lived on top of the gym and from my living room I see the school. for us, it was perfect. after the event, my life was turned upside down. i am continuously stressed. regarding material losses due to the lack of electricity and evacuation which lasted five days I lost all my food in the fridge and freezer in the living room and my big cat disparu. I'had this cat for 6 years and this loss really saddens me.	

201	Jacques G.	1) Loss of a week of work due to inability to work psychologically, inability to function with this immense disorder 2) Moral Prejudices for the loss of several friends and have suffered the destruction of our common living areas, mainly by the following limitations: access to the library, marina, has dozens of shops and service points.	
202	Lise V.	Moral and psychological damages Loss of income of 2 months. can't go downtown to grieve him, and my friend, and aquaintances that are missing . repetative nightmares, difficulty concentrating, regular crying. We are in the nothingness, they can not tell us anything, we hear speculation on both sides.	
203	Martin L	psychological distress, expenses incurred, inconveniances	I was left in the yellow zone and I was evacuated for six days, four days without medication, I was a person with limited mobility I had to stay here and there without my wheelchair or my car or my scooter the 5th day I was able to pick up my car and my medication that night I had to sleep in my car, because my friends could not keep me, I had not really received information the first 5 days, as it was cutting the cable internet and the phone only the 5th day I knew we could go to get help at the polyvalente. since that day I have nightmares and every time I go I still see the police stopping me from going home. For me it was the worst 6 days of my life. expenses for clothing, for food, for my cell and the gas for my car because I did not know where to go
204	Marthe D.	Losses at two levels 1 - post-traumatic syndrome: insecurity, nightmares, extreme stress at the time of evacuation when I had to evacuate my mother is on the second floor and does not walk. Physical problems such constant cardiac arrhythmia during July 6, extreme fatigue which made it difficult to take care of my mother in severe cognitive loss, two weeks of pain and gastrointestinal disorders including two sleepless nights. 2 - Work Lost my main selling point in the MRC du Granit for products of my company Arpell & Valois with the destruction of Papeterie Mégantic" and second point at Lambrequin	
205	Violaine T.	Psychological distress: sadness, loss of quality of life, anxiety, feelings of isolation, cut the city in two. inconveniance: Must see phychologist and should consult physiotherapist for back pain. monetary loss: Absence from work: Additional stress has a large surplus working as many displacements additional costs, many road mileages and given that I live in Fatima part of Lac-Megantic, must constantly make detours and put gasoline twice as much as before.	We have been evacuated, July 6 to July 9. upon our return, have suffered odor and noise. I live with a disabled person who also has needs services outside the Fatima area, so lots of planning to organize our lives for essential things, monetary loss for the purchase of a $ 1.260 BionX battery for electric bike, the only means of displacement apart the car to my spouse.

206	Linda D.	I am owner of a residence for seniors 16 residents which we evacuated and relocated to different places including 4 to my private residence. damage to the residence due to consequences of the accident because pumps in the basement could not function due to lack of electricity and everything was flooded and had to demolish and rebuild the whole basement where there was 6 bedrooms . Experienced symptoms, psychological distress - tencurred expenses - loss of income - all the steps incurred for the rights of residents as many families could not handle it. - See the distress of residents also destabilized and see to their well being disadvantages - loss of property, movable or immovable - causing material damage replacement and / or repair - the depreciation of real estate - the steps taken so thatthe 16 residents can get what they were entitled to - all the stress incurred before it is recognized that the residence Champlain was part of a consequence of the disaster - the stress of finding an adequate staff to do the job - the stressful whether have the necessary income to continue my activities	Breach of my privacy - to avoid that four residents with cognitive impairments are more troubled by the events I've hosted at home and therefore had to establish a work schedule of 24 hours in my private residence with employees, then my personal and private space has been invaded for more than a month's time as the reconstruction be ended. To enable all I remain in the trailer to allow residents to be well.
207	Stephanie P.	We live in a house where the railway runs right behind our house. We all had a nervous breakdown from the event, nightmares, insomnia, waking up in the night, when there is a noise we are startled, when there is a strange noise we question ourselves and the heart beats faster, when there is a motorcycle sound we think that the train is passing. Following the event, the children did not want to swim in our pool, no longer wanted to play in the backyard. We had many lively discussions after the event about our house because if the train goes back to using the track several members of the family can not live so close to the train. Therefore, severalrelocation solutions have been discussed. However, we know that selling our house near the railway will be almost impossible which complicates our lives. Following this event, we have lost our sense of security in our house.	A family of 5 lives at this address. Francis P, spouse. Children = Saskia P. , justin P. and Thomas P. Do members of one family have to sign up separately?
208	Liliane G.L.	My sister in law died in this tragedy. I am a survivor, I was at the scene of the tragedy. My car was burned in the fire. Traumatic stress disorder, insomnia, crying, fear of noises, anxiety, anguish. loss of enjoyment of life. I'm doing social psychotherapy.	
209	Jean-Rock L.	I was at the scene of the crime at the time of the tragedy, I am a survivor. My sister died in this tragedy. My car was burned. I suffered a nervous shock, anguish, loss of enjoyment of life.	
210	Pierrette B.	I was so scared that I had a huge panic attack. I'm on medication since then and I still have trouble looking out the window because I see the fire and the explosions that i saw that night of hell that I have lived through since I stood 200 meters from celaet really in line with the tragedy I felt when I went out onto my balcony an immense heat and had trouble breathing and I felt burning on my legs and arms because there was an explosion while i went down the stairs and I fell on my legs and my husband picked me up. it was total panic. and still today i have trouble sleeping I always have flashes in my head I do't think I will ever recover from this. i'm very discouraged.	

211	Carole T.	traumatized by the events, increased anxiety, lost a week's wages, trouble sleeping and re-seeing the scene from my house (fire behind the steeple of the church). Unable to work because of fear prevented me from getting downtown to my workplace on Villeneuve street.	
212	SERGE J.	total loss of my residence and documents	
213	Denis P.	On the night of July 6, 2013 to 1:15 am, an infernal noise and explosions woke us. Looking out the fire came down the street and the houses near my home were burning already. We went out running to avoid being burned alive. We are evacuated for at least one year.	
214	Céline V.	An unreal awakening on the night of July 6, 2013. I saw the fire start in the street and I was frozen on site. total incomprehension. I met with psychologists of the Red Cross and still two months after the event, I am always on the alert, fear the night, the light etc ... We live in like bohemians, from one spot to another. We have a hard time with these displacements, life is not normal and will last for at least another year. we were hit hard.	
215	Marie-Claire S.	I own three rental properties: xxxx des Veterans, xxxx-xxxx Thibodeau, xxxx des Veterans - all in the disaster area. Loss of income on rent four rentals - Loss of enjoyment of life because of the location of the xxxx des Veterans (on the park and the lake) - the disadvantages of not having all services at hand (bank, shops, grocery) - the distress of tenants who transposes to the owners - material damage that might result in the contamination of the three buildings (results to come) - evacuation of his main house - any other pecuniary loss to come.	
216	Gisèle G.	Shock "end of the world" and now depressive state, lost. Lack of appetite and sleep. Remained fearful at the slightest sound and lights, the color of fire. It was like a horror film. At 67 years I have lived through many difficulties but this tragedy for me is one of the worst. Insecurity takes over.	
217	Yvette T.	Anxiety, stress, loss of a cousin at Musi-Cafe, loss of enjoyment of my house that I could recover until September-October 2014.	
218	Nathalie R.	In addition to having been evacuated for 6 days, I lost electricity and threw out all my groceries and go back to zero. On the night of July 6, I left the Musi-Cafe and passed the railway line, 2 minutes later the explosion burned my right arm to 2nd degree burn, I'm going to the hospital and I was treated and my life is no longer beautiful, now it'll get better with time I was told.	
219	Mélanie B.	I need to do more distance to do errands	
220	Keven L.L.	I stopped work because my business is in the disaster area. We will rebuild elsewhere ..	
221	Cindy, M-D.	Loss of enjoyment of life, subsequent costs. State of shock. Additional expenses incurred as a result to the situation of the city.	

222	Julie	Disorders, stress and inconvenience: My husband was awakened by the train in flames flame passing directly in back of the trailer where he slept with my children. We have to be evacuated by 911 and firefighters. We had to wake up my children, who were present at the explosion, to leave the city and seek refuge with my in-laws in Marston. My children suffered a shock resulting from the sight of the explosion and during the two weeks that followed, the routine was extremely difficult, especially since my parents stayed with me since they were evacuated for a week. The railway line passes behind our residential land and the future use of this railroad worries me.	
223	Carole R.	evacuated from home two days, lost my job (I worked in the city center), stress and poor sleep, jump at every little noise, distress did not know what will happen to us, extreme sensitivity to any change, big change of my life etc etc etc.	
224	Jean-Marc L.	been evacuated two days, psychological distress, sleep disorder, apathy etc.	
225	Cloée B-L.	Psychological Distress, insomnia and need to follow up with a social worker. - Loss of revenue, order the doctor to work only part-time (exhaustion and psychological distress). Incurred expenses (food wasted, evacuation of my home for a few days). - Loss of enjoyment of life.	
226	Marc F.	psychological distress - incurred expenses - inconvenience	
227	Johanne F.	I was diagnosed with post traumatic stress, I've always have tears in my eyes, I had to reduce my hours of work, I consult a pshycologist, stress, loss of enjoyment, fatigue, unhappiness, sadness that we no longer have the city center, the great empty, the anxiety not to see it and not have access.	I am one of the people who was evacuated on the night of the tragedy, the July 6, 2013 to 1hre30, and then saw the explosion from the parking lot of the walmart around 4 in the morning which gave us terrible jitters

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: **MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,** **Debtor.**	**Chapter 11** **Case No. 13-10670 (LHK)**

AFFIDAVIT DE GUY OUELLET

1. Mon nom est Guy Ouellet et je réside dans la ville de Lac-Mégantic, Québec. Ma conjointe de fait de plus de 5 ans, Diane Bizier, est décédée dans le déraillement du train du 6 juillet 2013 qui a causé une explosion catastrophique et un incendie dans le centre-ville de Lac-Mégantic.

2. J'ai souffert de la perte de ma conjointe et de la tristesse à la suite de la mort tragique de Diane et de divers types de préjudices économiques à la suite du déraillement du train, y compris la perte de revenu personnel.

3. Il y a près de cinquante victimes qui, comme Diane, ont été tragiquement tuées dans l'incendie provoqué par la catastrophe ferroviaire. Les membres de leur famille ont des réclamations comme la mienne pour la perte de leurs proches.

4. En outre, il y a des centaines de résidents de Lac-Mégantic, qui, comme moi, ont subi de la détresse suite à la mort tragique de voisins et résidents et de la destruction du cœur de notre ville qui a été dévastée comme une zone de guerre. De nombreux résidents ont subi la perte de leurs maisons, entreprises et ont des réclamations pour

perte de revenu personnel ou professionnel, perte de biens personnels, commerces et pertes de revenus d'affaires.

5. J'ai intenté une action devant la Cour supérieure du Québec à Lac-Mégantic sous la forme d'un recours collectif visant à obtenir une indemnisation au Québec pour toutes les victimes, en vertu de la loi du Québec et de la compétence de la Cour supérieure du Québec, envers les responsables de cette tragédie.

6. Je suis l'un des deux requérants dans la procédure du recours collectif déposée à la Cour supérieure du Québec (qui est jointe aux présentes comme **Pièce 1**). J'ai accepté d'agir comme requérant, parce que je crois dans le recours collectif et je suis d'accord que les réclamations contre MM&A et autres en lien avec la catastrophe ferroviaire de 6 juillet 2013 soient poursuivies devant la Cour supérieure du Québec.

7. Je suis informé que MM&A Limited a déclaré faillite selon le chapitre 11 dans le Maine et que MM&A Co. (Canada) a demandé une protection similaire au Québec. Je comprends qu'un Comité informel de créanciers de MM&A au Québec a déposé une requête devant le Tribunal de faillite dans le Maine afin d'avoir un comité officiel des victimes nommé pour représenter les intérêts de toutes les victimes.

8. Je suis informé que ce Comité comprendra le gouvernement du Québec, la ville de Lac-Mégantic et les gens comme moi. Je soutiens cette demande entièrement. Si besoin, je serais prêt à être un des membres de ce Comité, pourvu que les délibérations du Comité soit en français (ou traduites pour moi) et que cela me m'obligerait pas à manquer de travail.

English translation

STATEMENT OF GUY OUELLET

1. My name is Guy Ouellet and I reside in the town of Lac-Megantic, Québec. My "common law" partner of more than 5 years, Diane Bizier, died in the July 6, 2013 train derailment which caused a catastrophic explosion and fire in the center of Lac-Megantic.

2. I have suffered devastating personal loss and grief as a result of the tragic death of Diane and various types of economic harm as a result of the train derailment, including loss of income.

3. There were almost 50 victims who, like Diane, were tragically killed in the fire caused by the train disaster. Their family members have claims like mine for their personal loss.

4. In addition, there are many hundreds of residents of Lac-Megantic who, like me, have suffered distress from the tragic deaths of neighbors and residents and from the destruction of the very center of our town which was devastated like a war zone. Many residents have suffered the loss of their homes, businesses, and have claims for loss of personal or business income, and for loss of personal property, and loss of business and commercial property.

5. I have initiated a claim in the Québec Superior Court in Lac-Megantic as a proposed class proceeding to seek compensation in Quebec for all victims, under Québec law and the jurisdiction of the Québec Superior Court, against those responsible for this tragedy and the devastating loss.

6. I am one of the two proposed class representatives in the proposed class process in the Québec Superior Court (attached as **Exhibit 1**). I agreed to act as a Class Representative because I believe in the merits of the Class Action and I agree that the claims against MM&A and others arising out of the July 6, 2013 train disaster should be

7. I am aware that MM&A Limited has filed for Chapter 11 bankruptcy in Maine and that MM&A Co.(Canada) has sought similar protection in Québec. I understand that an informal committee of Québec creditors of MM&A has filed a request before the Bankruptcy Court in Maine to have an official committee of victims appointed to represented the interests of all victims.

8. I understand the committee would include the Government of Québec, the town of Lac-Megantic and people like me. I support this request entirely. If asked, I would be prepared to be one of the members of such committee provided that the discussions in the Committee are in French (or are translated for me) and this would not force me to miss work.

ET j'ai signé à Lac-Mégantic, le 25 septembre 2013.
AND I signed at Lac-Mégantic, this september 25, 2013.

GUY OUELLET

Déclaré solennellement devant moi à Lac-Mégantic, ce 25 septembre 2013.
Declared solemnly in front of me at Lac-Mégantic this september 25, 2013.

ISABELLE NADEAU #201594
Commissaire à l'assermentation pour la province du Québec
Commissioner for oaths for the province of Quebec

EXHIBIT 1

***See* Exhibit 1 to Sworn Statement of Jeff Orenstein**

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Chapter 11 Case No. 13-10670 (LHK)

AFFIDAVIT DE YANNICK GAGNÉ

1. Mon nom est Yannick Gagné et je réside dans la ville de Lac-Mégantic, Québec.

2. Je possède et exploite un restaurant et une petite salle de concert, le Musi-Café, situé à Lac-Mégantic, Québec.

3. J'ai travaillé au Musi-Café dans la nuit du déraillement. Moi et ma femme, qui était enceinte à ce moment de 7 mois, avons quitté l'établissement seulement 15-30 minutes avant le déraillement du Train.

4. À la suite du déraillement, j'ai souffert de nombreux dommages, y compris, la perte de mon entreprise et mon lieu de travail, la perte de 3 employés qui ont péri dans la tragédie, la perte de 12 employés, qui sont actuellement sans emploi et les investissements réalisés au cours des deux dernières années dans la rénovation du Musi-Café.

5. Je vais devoir reconstruire complètement ma vie, y compris la prise de toutes les mesures administratives pour relancer mes activités. En conséquence des dommages causés à ma place d'affaires et des moyens de subsistance, j'anticipe beaucoup de problèmes financiers dans l'avenir.

6. J'ai également subi personnellement une perte de temps, des inconvénients et du stress, créant une désorganisation et désorientation dans ma vie, suite aux événements du 6 juillet 2013.

7. Comme moi, de nombreux résidents ont subi la perte de leurs résidences, entreprises et ont des réclamations pour perte de revenu personnel ou professionnel, la perte de biens personnels et de propriété commerciale et de revenu d'affaires.

8. J'ai intenté une action devant la Cour supérieure du Québec à Lac-Mégantic sous la forme d'un recours collectif visant à obtenir une indemnisation au Québec pour toutes les victimes, en vertu de la loi du Québec et de la compétence de la Cour supérieure du Québec, envers les responsables de cette tragédie.

9. Je suis l'un des deux requérants dans la procédure du recours collectif déposée à la Cour supérieure du Québec (qui est jointe aux présentes comme **Pièce 1**). J'ai accepté d'agir comme requérant et je suis d'accord que les réclamations contre MM&A et autres, survenues dès suite de la catastrophe ferroviaire du 6 juillet 2013 doivent être poursuivies devant la Cour supérieure du Québec dans le district de Mégantic.

10. J'ai également récemment signé une convention d'honoraires avec la firme Webster Law (qui est jointe aux présentes comme **Pièce 2**), pour faire valoir mes droits aux États-Unis.

11. Lorsque ces avocats ont communiqué avec moi, ils étaient au courant de l'instance introduite devant la Cour supérieure du Québec. Ils m'ont conseillé que je pouvais bénéficier de cette instance, mais aussi de la procédure américaine.

12. Je suis informé que MM&A Limited a déclaré faillite selon le chapitre 11 dans le Maine et que MM&A Co. (Canada) a demandé une protection similaire au Québec.

13. Je comprends qu'un Comité informel de créanciers de Québec de MM&A a déposé une requête devant le Tribunal de faillite dans le Maine afin d'avoir un comité officiel des victimes nommé pour représenter les intérêts de toutes les victimes. Par contre je n'ai pas été informé par les avocats de Webster Law qu'ils ne veulent pas qu'un comité officiel des victimes soit formé.

14. Je suis informé que ce comité, s'il est formé, comprendra le gouvernement du Québec, la ville de Lac-Mégantic et les gens comme moi. Je soutiens cette demande entièrement. Si besoin, je serais prêt à être un des membres de ce Comité, pourvu que les délibérations du Comité soit en français (ou traduites pour moi) et que cela me m'obligerait pas à manquer de travail.

English translation

STATEMENT OF YANNICK GAGNÉ

1. My name is Yannick Gagné and I reside in the town of Lac Megantic, Quebec.
2. I owned and operated a restaurant and small concert venue, Musi-Café, located in Lac-Mégantic, Quebec.

3. I worked at Musi-Café the night of the Train Derailment. Me and my wife, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment.
4. As a result of the Train Derailment, I suffered many damages, including, the loss of my business and my place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café.
5. I will have to completely rebuild my life, including taking all the administrative measures to revive my business. As a result of the damage done to my place of business and livelihood, I anticipate many financial problems in my future.
6. I also suffered from a great deal of sadness, anguish, stress and melancholy, loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013.
7. Like me, many residents have suffered the loss of their homes, businesses, and have claims for loss of personal or business income, and for loss of personal property, and loss of business and commercial property.
8. I have initiated a claim in the Québec Superior Court in Lac-Megantic as a proposed class proceeding to seek compensation in Quebec for all victims, under Québec law and the jurisdiction of the Québec Superior Court, against those responsible for this tragedy and the devastating loss.
9. I am one of the two proposed class representatives in the proposed class process in the Québec Superior Court (attached as **Exhibit 1**). I agreed to act as a Class Representative because I believe in the merits of the Class Action and I agree that

the claims against MM&A and others arising out of the July 6, 2013 train disaster should be pursued in the Superior Court in Québec in the district of Mégantic.

10. I also recently signed an agreement of fees with the Webster Law firm (which is attached hereto as Exhibit 2) to assert my rights to the United States.

11. When these lawyers have contacted me, they were aware of the proceedings in the Superior Court of Quebec. They advised me that I could benefit from this instance, but the American procedure also.

12. I am aware that MM&A Limited has filed for Chapter 11 bankruptcy in Maine and that MM&A Co. has sought similar bankruptcy protection in Québec.

13. I understand that an informal Committee of creditors of Québec of MM & A has lodged a complaint with the bankruptcy court in Maine in order to have an official Committee of the victims named to represent the interests of all the victims. However I have not been informed by counsel for Webster Law that they do not want to be formed an official Committee of the victims.

14. I am informed that this Committee, if it is formed, will include the Government of Quebec, the city of Lac-Mégantic and people like me. I fully support this request. If necessary, I'd be willing to be one of the members of this Committee, provided that the deliberations of the Committee is in French (or translated for me) and would this me require me not to miss work.

ET j'ai signé à Lac-Mégantic, le 27septembre 2013.
AND I signed at Lac-Mégantic, this September 27, 2013.

YANNICK GAGNÉ

Déclaré solennellement devant moi à Lac-Mégantic, ce 27septembre 2013.
Declared solemnly in front of me at Lac-Mégantic this September 27, 2013.

ISABELLE NADEAU #201594
Commissaire à l'assermentation pour la province du Québec
Commissioner for oaths for the province of Quebec

EXHIBIT 1

***See* Exhibit 1 to Sworn Statement of Jeff Orenstein**

EXHIBIT 2

CONTRAT BLESSURES PERSONNELLES ET SERVICES PROFESSIONNELS

ACCORD AVOCAT-CLIENT

Le « Client » soussigné retient par la présente les cabinets d'avocats **Meyers & Flowers, LLC** dont les bureaux sont situés au 225 West Wacker Drive, Suite 1515, Chicago, Illinois 60606, le cabinet d'avocats **The Garcia Law Group** dont les bureaux sont situés au 1305 E. Griffen Parkway, Mission, Texas 78572, et le cabinet d'avocats **Webster Law Firm** dont les bureaux sont situés au 6200 Savoy, Suite 515, Houston, Texas 77036 (les « Cabinets ») pour fins d'enquêtes et de poursuites concernant toutes les plaintes pour blessures corporelles et/ou décès et/ou dommages à la propriété découlant d'un déraillement qui s'est produit le 6e jour de juillet 2013 autour ou à proximité de Lac-Mégantic au Québec, Canada.

Dans le cas où le dossier du Client est résolu en faveur du Client par voie de règlement après le dépôt d'une plainte formelle, le client s'engage à payer aux cabinets d'avocats quarante pour cent (40,0 %) de toute somme recouvrée au titre d'honoraires de cabinet d'avocats. Le Client comprend et accepte que les honoraires d'avocats seront divisés entre les Cabinets et que les Cabinets assumeront la responsabilité financière de la représentation du client.

Dans l'éventualité où rien n'est recouvré pour le Client par le biais de procès ou de règlement, aucun frais d'avocat ne sera versé aux Cabinets.

Les Cabinets avanceront tous les frais et coûts raisonnables qu'ils jugent nécessaires pour enquêter et poursuivre la plainte du client, notamment frais de dossier, frais de copie (0,05 $ par page), affranchissement/ expédition, frais de recherche assistée par ordinateur à partir de Westlaw et/ou Lexis-Nexis, frais de témoins experts, services de mise aux dossiers judiciaires, frais de déplacement raisonnables, frais de témoin versés aux médecins du Client et témoins au procès, coûts pour création de dépôt de pièces à conviction et déposition et frais pour obtenir les dossiers et les factures médicales du Client. Dans l'éventualité où rien n'est récupéré pour le Client par le biais de procès ou d'un règlement, le Client n'est pas tenu de rembourser aux Cabinets aucune des dépenses ni aucun des coûts encourus quels qu'ils soient.

Les honoraires d'avocats décrits ci-dessus seront calculés sur le montant total du règlement ou du jugement recueilli, intérêts et frais compris.

À la suite de la décision finale sur le cas, le client recevra un relevé de la répartition détaillant toutes les informations nécessaires pour comprendre l'application du présent Accord. La part reçue par le client à partir de la décision finale sera le montant total du règlement moins les honoraires d'avocats.

Le client autorise expressément les Cabinets à publier des informations relatives à l'affaire.

Le client accepte les termes de cet accord et accuse réception d'une copie complète du présent Accord.

FAIT ce _____ jour du mois de _____ 20____.

_____

Signature du client

ACCEPTÉ:

MEYERS & FLOWERS, LLC THE WEBSTER LAW FIRM GARCIA LAW GROUP

Par: _____ Par: _____ Par: _____

CLIENT INFORMATION SHEET

I. VICTIM INFORMATION

Name: _____

Home Address: _____
In Red Zone: Y/N

Home Phone: _____

Cell Phone: _____

Email: _____

Social Security Number/Social Insurance Number: _____

Age: _____ Date of Birth: _____

Marital Status: _____ Date of Marriage: _____

Spouse's Name: _____

Education:
Highest Level of Education: _____

Degree Obtained? Name of Degree: _____

Name of School Attended: _____

Injury:
Death: Y/N Death Certificate: Y/N Missing: Y/N

Location of Death: _____

Other Details: _____

Personal Injuries: _____

Property Loss & Damages: _____

Loss of Use of Property: _____

DEPENDENTS:

Name(s)	Age	Relationship
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

HEIRS:

Name(s)	Address & Phone Number
1. _____	_____
	_____
2. _____	_____
	_____
3. _____	_____
	_____
4. _____	_____
	_____

EMPLOYMENT (lost wage claim):

Employer's Name: _____

Employer's Address: _____

Position with Company: _____

Supervisor's Name: _____

Job Description / Responsibilities: _____

_____

Pay Scale (hourly / weekly / salary): _____

II. CLIENT INFORMATION (if different than victim):

Name: _____

Home Address: _____

Home Phone: _____

Cell Phone: _____

Email: _____

Relationship to Victim: _____

III. VICTIM'S INJURIES & MEDICAL TREATMENT (if injured, sign release):

Description of Injuries: _____

Medical Treatment: _____

Location of Medical Treatment: _____

IV. OTHER INFORMATION and NOTES: