

# COURT OF QUEBEC

«Small Claims Division»

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF BEAUHARNOIS  
LOCALITY OF SALABERRY-DE-VALLEYFIELD  
«Civil Court»  
N° : 760-32-011326-065

DATE : April 21, 2010

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IN THE PRESENCE OF THE : HONOURABLE MARIE-ANDRÉE VILLENEUVE, Q.C.J

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**GIULIA D'ALESIO and GUY RENAUD**  
Plaintiffs – Cross-defendants

v.

**LISE BEAUDET MARKOWSKY**  
Defendant – Cross-plaintiff

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## JUDGMENT

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[1] The plaintiffs are claiming \$7000 in damages from the defendant, their neighbour, who would have abused her right to use her wood stove, which would have caused them prejudice.

[2] The defendant is contesting the claim for the reasons that will later be explained.

### THE FACTS:

[3] The facts accepted by balance of evidence can be summarized as follows:

[4] In 2003 and 2004, the parties were neighbours on 102<sup>nd</sup> Avenue in Notre-Dame de l'Île-Perrot. Mr. Renaud was the owner of a residence located at 30 of the same Avenue and the defendant, Mrs. Beaudet, was the owner of a residence located at 32 of the same Avenue.

[5] At the time, Mrs. D'Alesio complained to Mrs. Beaudet and asked her to stop using her wood stove given the smoke was unpleasant.

[6] In 2006, the situation did not improve. Mrs. D'Alesio had certain respiratory problems. Given Mrs. Beaudet had not met her demands, Mrs. D'Alesio filed a complaint with the city of Notre-Dame de l'Île-Perrot.

[7] Inspector Valérie Thibault went to Mrs. Beaudet's home on several occasions. She concluded that the emissions coming from Mrs. Beaudet's stove did not constitute a nuisance under municipal by-laws and notified Mrs. D'Alesio of that.

[8] Around the same time, safety practitioner Michel Boudreault was mandated to check if Mrs. Beaudet's wood stove and chimney were compliant with regulations. He paid her a visit in May 2006. He noticed the chimney was missing a small section. After having informed Mrs. Beaudet of that, she added the missing section to become compliant.

[9] In 2006, the defendant stopped using her stove from June 11 to around August 26. Afterwards, Mrs. D'Alesio sent a demand letter to Mrs. Beaudet to urge her to stop using her wood stove in an abusive manner because it caused her and her family many annoyances (headache, nausea, smoke odors in her house, closed windows, etc.).

[10] Mrs. Beaudet replied in writing on November 1, 2006. She stated having the right to make a fire in her stove. She added that other neighbours were doing so as well.

[11] In December 2006, the plaintiff instituted proceedings against the defendant. Given the situation lasted for years (2007, 2008 and 2009), the plaintiffs amended their procedure in January 2010 to claim \$7000 in damages to cover the whole period, from 2006 to 2009 inclusively.

[12] Except during the months of July and August each year, Mrs. Beaudet stated she would start her stove from 4 p.m. to the following morning. She also used electrical heating but used her stove a lot to lower heating costs (as she testified to during the hearing).

[13] In 2008, Mrs. D'Alesio consulted an allergy and asthma specialist. He wrote in a letter dated June 3, 2008, that Mrs. D'Alesio was moderately allergic to cats and dust. He mentioned it made her more sensitive to wood stove smoke.

**RELEVANT LEGISLATIVE PROVISIONS:**

[14] The following sections:

**6.** Every person is bound to exercise his civil rights in good faith.

**7.** No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.

**976.** Neighbours shall suffer the normal neighbourhood annoyances that are not beyond the limit of tolerance they owe each other, according to the nature or location of their land or local custom.

**1375.** The parties shall conduct themselves in good faith both at the time the obligation is created and at the time it is performed or extinguished.

**1457.** Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

**DISCUSSION:**

[15] Even if the municipal inspector did not conclude that there had been nuisance under municipal by-law, the Court must determine, in light of the entire evidence, if the plaintiff suffered abnormal neighbourhood annoyances.

[16] Except in July and August of each year, the evidence reveals that the defendant used her wood stove as a heating method every day from 4 p.m. to the following morning (at least 12 hours or more a day). Smoke came out the chimney. There were often emanations, fumes, and odors (given the direction of prevailing winds) on the rear balcony where the plaintiff's garage was, and also inside the house, which is why they kept the windows closed.

[17] Mr. Renaud, Mrs. D'Alesio and their daughter Sabryna had headaches and even throat aches due to the odors and fumes.

[18] Mrs. Beaudet claims other neighbours used their stove too. The Court accepts Mrs. D'Alesio statement that the other two front neighbours did not use their stove as regularly as Mrs. Beaudet and that their residence was much farther than that of Mrs. Beaudet which was located at only 30 feet from hers.

[19] The plaintiffs therefore suffered annoyances because the defendant used her stove on a daily basis. They could not use their clothes line. They could not enjoy being outside (especially in their backyard). They were repeatedly annoyed by the odors and fumes.

[20] Sometimes, they had headaches. Mrs. D'Alesio said she had respiratory problems due to the smoke and to that effect, she filed a letter from a doctor. However, the evidence is not conclusive as to the smoke being the unique cause of her respiratory problems. On one hand, Mrs. D'Alesio was a bus driver and on the other, she had smoked for 20 years up until 2002.

[21] Mrs. D'Alesio had Mrs. Michaud, a real estate agent, testify to demonstrate that odors and fumes coming from a neighbour considerably affected the sale of a house. However, Mrs. Michaud is not an expert assessor and did not testify as such.

### **CONCLUSIONS:**

[22] The Court concludes from the evidence that the strong odor and emanations coming from the defendant's chimney repeatedly caused many annoyances to the plaintiffs on a long period of time. These annoyances outweigh normal neighbourhood annoyances that the plaintiffs had to endure.

[23] The Court would like to point out this statement from the Supreme Court that applies in this case:

"In addition to the general rules applicable to fault-based civil liability, it is necessary to recognize a scheme of no-fault civil liability in respect of neighbourhood disturbances under art. 976 C.C.Q. that is based on the annoyances suffered by the victim being excessive rather than on the conduct of the person who allegedly caused them. The inclusion of

art. 976 in the book on property confirms that the legislature intended to separate neighbourhood relations from the general rules on obligations. This provision thus relates more to the right of ownership than to the general rules of civil liability. Next, the actual words of art. 976 do not require evidence of wrongful conduct to establish the liability of an owner who has caused excessive neighbourhood annoyances. Moreover, the commentaries of the Civil Code Revision Office and the Minister of Justice support a conclusion that the legislature's intention was not to limit actions relating to neighbourhood disturbances to cases involving the wrongful exercise of a right. Finally, art. 976 is related to other provisions that focus on the result of an act, not on an owner's conduct. A scheme of civil liability based on the existence of abnormal neighbourhood disturbances that does not require proven or presumed fault is also consistent with the approaches taken in Canadian common law and in French civil law." <sup>1</sup>

[24] The defendant will therefore be held responsible for the prejudice caused to the plaintiffs.

[25] Taking into consideration the aforementioned elements, the Court concludes that a sum of \$3200 would duly indemnify the plaintiffs for damages.

[26] Given the Court partially grants the main application, the defendant's cross-demand will be dismissed.

## FOR THESE REASONS, THE COURT:

**Partially GRANTS** the plaintiffs' application;

**ORDERS** the defendant to pay the plaintiff the sum of \$3200 plus interest at the statutory rate as of January 21, 2010 plus the additional indemnity provided by section 1619 of the Civil Code of Québec and the judicial costs.

**DISMISSES** the cross-demand.

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MARIE-ANDRÉE VILLENEUVE, Q.C.J.

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<sup>1</sup> Ciment St-Laurent Inc. v. Barrette, C.S.C. 64, p. 5-6.

**Notice to the parties****Excerpt from the Quebec Code of civil procedure****DIVISION III  
RETRIEVAL AND DESTRUCTION OF EXHIBITS**

331.9 Once proceedings are terminated, the parties must retrieve the exhibits they have filed, failing which the exhibits are destroyed by the clerk one year after the date of the judgment or of the proceeding terminating the proceedings, unless the chief justice or chief judge decides otherwise.

Where a party, on whatever grounds, seeks a remedy against a judgment, the exhibits that have not been retrieved by the parties are destroyed by the clerk one year after the date of the final judgment or of the proceeding terminating the proceedings, unless the chief justice or chief judge decides otherwise.

1994, c. 28, s. 20

