Nuisance Law in Quebec (article 976 C.C.Q.): 10 years after *Ciment du Saint-Laurent*, where do we stand?

David E. ROBERGE

Abstract

Article 976 of the *Civil Code of Quebec* (C.C.Q.) states that "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 usage." In 2008, the Supreme Court of Canada rendered a landmark decision in the matter of *Ciment du Saint-Laurent inc.* v. *Barrette*, which confirmed that article 976 C.C.Q. establishes a strict liability regime for neighbourhood disturbances, focusing on the result of the owner's act rather than on the owner's conduct. Ten years after this decision, this article reviews the recent case law of the higher courts on this topic, comments on trends observed in claims decided in Quebec since 2008, and examines some characteristics of class actions on this issue.

Résumé

L'article 976 du *Code civil du Québec* (C.c.Q.) énonce que « Les voisins doivent accepter les inconvénients normaux du voisinage qui n'excèdent pas les limites de la tolérance qu'ils se doivent, suivant la nature ou la situation de leurs fonds, ou suivant les usages locaux. » En 2008, la Cour suprême du Canada a rendu une décision importante dans l'affaire *Ciment du Saint-Laurent inc.* c. *Barrette*, confirmant que l'article 976 C.c.Q. établit un régime de responsabilité objective pour les troubles de voisinage, axé sur

le résultat de l'acte accompli par le propriétaire plutôt que son comportement. Dix ans après cette décision, cet article résume la jurisprudence récente des tribunaux d'appel à ce sujet, dégage certaines tendances des réclamations jugées depuis 2008 et analyse quelques particularités des actions collectives en la matière.

Nuisance Law in Quebec (article 976 C.C.Q.): 10 years after *Ciment du Saint-Laurent*, where do we stand?

David E. ROBERGE*

* The author is a lawyer, partner at the firm McCarthy Tétrault LLP, and he practices litigation in Montreal.

"Dust they are, and unto dust they shall return, yet human beings have difficulty resigning themselves to living in dust."
Ciment du Saint-Laurent inc. v. *Barrette*[1]

INTRODUCTION

In 2008, the Supreme Court of Canada rendered a landmark decision in the matter of *Ciment du Saint-Laurent*, which confirmed that article 976 of the *Civil Code of Quebec* (C.C.Q.) establishes a strict liability regime with respect to neighbourhood disturbances.

With this judgment, the Supreme Court brought Quebec's environmental liability regime for neighbourhood annoyances closer to the common law of nuisance. The confirmation of a regime focusing on harm suffered rather than on prohibited conduct impacted the type of judicial claims brought forward, the evidence presented in support of those and the remedies granted, in civil law matters.

Ten years after the decision issued in *Ciment du Saint-Laurent*, what is the state of nuisance law in Quebec? This article will: 1) review the recent case law of the higher courts on this topic, 2) comment on trends observed in neighbourhood disturbances claims decided in Quebec since 2008, and 3) examine some characteristics of class actions on this issue.

1. NUISANCE IN THE HIGHER COURTS

(a) The recent decisions of the Supreme Court

In the last decade, the Supreme Court has commented more significantly on nuisance in two cases: *Ciment du Saint-Laurent* and *Antrim Truck Centre Ltd.* v. *Ontario (Transportation)*.[2]

In *Ciment du Saint-Laurent*, the plaintiff Ms. Barrette, a resident of the Quebec City area, instituted a class action against

1. *Ciment du Saint-Laurent inc.* v. *Barrette*, [2008] 3 S.C.R. 392, par. 1 ["*Ciment du Saint-Laurent*"]. The trial judge's decision on the merits is reported at *Barrette* v. *Ciment du Saint-Laurent inc.*, 2003 CanLII 36856 (QCCS), and the Court of Appeal judgment at *Ciment du Saint Laurent inc.* v. *Barrette*, 2006 QCCA 1437.
2. [2013] 1 S.C.R. 594 ["*Antrim*"].

the appellant company for neighbourhood disturbances related to the operation of its cement plant.

The plant had begun operating around 1955 and, over time, neighbourhood problems arose between the company and people residing in the vicinity. In 1993, a motion to institute a class action was filed in the Quebec Superior Court and it was certified in 1994, with the legal action following shortly after in the same year. The class representatives alleged various faults in the operation of the business and also contended that neighbourhood disturbances in the form of dust, noise and odours caused by the plant were abnormal or excessive, despite measures taken by the company for environmental protection purposes. The company stopped operating the plant in 1997, yet disputes with its neighbours continued in the courts.

This factual background led the Supreme Court to analyse the liability regime created by article 976 C.C.Q., which states that "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 usage." This provision is found in the book of the C.C.Q. entitled "Property", which is distinct from the book on "Obligations".

Even though article 976 C.C.Q. is worded as a duty of tolerance, the Supreme Court explained that "it codifies a line of authority according to which owners are not to be exempted from liability for damage associated with excessive annoyances they have caused for their neighbours."[3]

After reviewing the legislative history, the case law and commentaries on article 976 C.C.Q., the Supreme Court put an end to a jurisprudential controversy about the nature of the liability associated with neighbourhood annoyances, by confirming that this provision establishes a strict (no-fault) liability regime,[4] which

3. *Supra* note 1, par. 58.
4. *Ibid*, par. 75. Prior to the decision of the Supreme Court in *Ciment du Saint-Laurent*, authorities were divided on whether article 976 C.C.Q. was based on civil fault or not. Interestingly, the Court of Appeal had decided in this matter on a third approach, suggesting a "liability *propter rem*" (real liability), by which the obligation not to injure one's neighbour would be treated as a charge on every immovable in favour of neighbouring lands; this was rejected by the Supreme Court (par. 81-85).

is distinct from both the concept of abuse of rights and the general rules of civil liability. As a result, article 976 C.C.Q. does not require the plaintiff to demonstrate negligence of the defendant.

In so concluding, the Supreme Court made it clear that the limit of the right of ownership embodied in article 976 C.C.Q. relates "to the result of the owner's act rather than to the owner's conduct."[5] In *Ciment du Saint-Laurent*, the finding of abnormal inconveniences was made even though the company's activities were in compliance with applicable standards.[6]

The Supreme Court specified that the term "neighbour" in article 976 C.C.Q. must be construed liberally, so that this regime may not only benefit the owner of the land but also any person who exercises a right to enjoy or use this land as, for instance, a lessee or an occupant.[7] While there must be a sufficient geographical proximity between the annoyance and its source, the properties concerned do not need to be adjacent.[8]

In its comments, the Supreme Court also recognized the relevance of article 976 C.C.Q. as a source of liability in class action proceedings.[9]

Because the issue at stake in *Ciment du Saint-Laurent* pertained to defining the nature of the liability regime for neighbourhood annoyances found in article 976 C.C.Q., the Supreme Court did not have the opportunity to comment on the evidentiary threshold required to support such a claim. However, it mentioned that Canadian common law and French law on nuisance would generally require the interference to be substantial and would not compensate trivial annoyances.[10]

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5. *Ibid*, par. 86.
6. *Ibid*, par. 94.
7. *Ibid*, par. 83.
8. *Ibid*, par. 96. With respect to the need for a sufficient geographical proximity and some permanence before one could claim to be a "neighbour", see also: *Regroupement des citoyens contre la pollution* v. *Alex Couture inc.*, 2006 QCCS 950, par. 53-55 and *Ouimette* v. *Canada (P.G.)*, 2002 CanLII 30452 (QC CA), par. 103-104.
9. *Ibid*, par. 84.
10. *Ibid*, par. 77-78.

A few years after its decision in *Ciment du Saint-Laurent*, the Supreme Court commented on nuisance in *Antrim*, a case involving a claim for injurious affection pursuant to the *Expropriation Act* of Ontario.[11] Although emerging from a different context, this judgment is useful in clarifying the liability regime that was defined in *Ciment du Saint-Laurent*.

In *Antrim*, the appellant company was the owner of a lot, adjacent to a highway in Ontario, on which it operated a truck stop complex that included a restaurant and a gas station. In 2004, the Ministry of Transportation of Ontario opened a new section of the highway which significantly modified the conditions from which the appellant benefited, as motorists using this new stretch of the highway no longer had direct access to the complex. This eventually led the appellant company to close the truck stop, resulting in loss of property value and loss of business. It is in this context that a claim for injurious affection was filed pursuant to the *Expropriation Act* of Ontario.

The Supreme Court had to determine, in accordance with the *Expropriation Act*, whether the action would give rise to liability were it not for the statutory scheme. This led the Court to conduct a comprehensive review of the rules related to private nuisance, caused by projects that would further the public good.

Referring to *Ciment du Saint-Laurent* as its most recent analysis of the concept of nuisance, the Supreme Court stated in *Antrim* that a nuisance consists of an interference with the claimant's use or enjoyment of land in a way that is both "substantial and unreasonable".[12]

A substantial interference is one that is non-trivial, amounting to more than slight annoyance or trifling interference. The Supreme Court explained that only interferences significantly altering the nature of the complainant's property or interfering, to

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11. In Quebec, the right to compensation for expropriation in circumstances similar to those presented in *Antrim* had been recognized by the Supreme Court in *The Queen* v. *Loiselle*, (1962) S.C.R. 624. In this matter, the Court found that even a very important public purpose did not outweigh the individual harm to the claimant, who was entitled to an award of compensation for injurious affection.
12. *Antrim*, *supra* note 2, par. 18-19.

a significant extent, with the actual use of the property, are sufficient to ground a claim in nuisance.[13] As such, minor or transitory inconveniences, part of the "give and take of life" in society, would not be compensated.

If the interference is deemed to be substantial, then the reasonableness of that interference must be assessed in light of all relevant circumstances. The Supreme Court suggested that this balancing exercise focuses on "whether the interference is such that it would be unreasonable in all of the circumstances to require the claimant to suffer it without compensation."[14]

The Supreme Court pointed out in *Antrim* that, in the traditional law of private nuisance, courts will assess reasonability by balancing the gravity of the harm against the utility of the defendant's conduct.[15]

In order to assess gravity of the harm, the analysis of reasonableness will consider the nature of the neighbourhood, the severity of the interference, its frequency and duration, and the sensitivity of the plaintiff.[16] In this regard, prolonged inconveniences are more likely to attract compensation than temporary interferences.

The Supreme Court specified that, although the reasonableness of the interference is focused on the nature and extent of the interference with the plaintiff's property rather than the defendant's conduct, the latter is not an irrelevant consideration when it is meant to minimize nuisance.[17] In this regard, evidence that the defendant acted with all reasonable care to avoid harm may

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13. *Ibid*, par. 22.
14. *Ibid*, par. 25.
15. *Ibid*, par. 26. The utility of the defendant's conduct for the society is a criterion from the Canadian common law of nuisance that appears external to article 976 C.C.Q. but which has been sparingly applied by the courts in Quebec: M. Gagné, "Les recours pour troubles de voisinage : Les véritables enjeux", in Service de la formation permanente, Barreau du Québec, *Développements récents en droit de l'environnement*, vol. 214, Montréal, Éditions Yvon Blais, 2004, p. 91. The Quebec Court of Appeal alluded to it in *Paspébiac*, *infra* note 19, par. 20. An author suggests that this criteria could be useful to balance costs and benefits of an activity for society: Jean Teboul, "Troubles de voisinage : l'article 976 C.c.Q. et le seuil de normalité", (2012) 71 *R. du B.* 103, p. 141 ["Teboul"].
16. *Ibid*, par. 26 and 40.
17. *Ibid*, par. 29.

have a bearing on whether he or she subjected the plaintiff to an unreasonable interference. The utility of the defendant's conduct, while it is not in itself an answer to the inquiry, could also be a relevant factor in evaluating claims against public authorities.[18]

While these comments in *Antrim* were made in the context of public works, they are useful to understand which evidence is considered relevant in a strict liability regime like that enacted by article 976 C.C.Q.

(b) Comments from the Quebec Court of Appeal

Since the ruling of the Supreme Court in *Ciment du Saint-Laurent*, the Quebec Court of Appeal has had a few opportunities to comment on article 976 C.C.Q.

In *Entreprises Auberge du parc ltée* v. *Site historique du Banc-de-pêche de Paspébiac*,[19] the Court of Appeal confirmed that neighbourhood annoyances must not be assessed in the abstract, but in considering the environment in which an alleged abuse of the right of ownership is said to have materialized.[20]

In this case, a thalassotherapy center was seeking to obtain an injunction against a non-profit association organizing nearby outdoor musical shows in the summer. Provincial and municipal standards regarding noise were complied with, but the complainants based their claim on article 976 C.C.Q., alleging that musical shows generated noise that was beyond the limit of tolerance applicable to their situation. The Superior Court having rejected their claim, the plaintiffs appealed, to no avail.

In dismissing the claim, the Court of Appeal specified in *Paspébiac* that the reasonableness of the neighbourhood inconveniences must be assessed according to an "objective standard". Therefore, the threshold of tolerance must be appreciated from the point of view of a reasonable neighbour placed in similar cir-

18. *Ibid*, par. 30.
19. 2009 QCCA 257 ["*Paspébiac*"].
20. *Ibid*, par. 17.

cumstances, rather than according to the subjective expectations of the complainants.[21]

In qualifying inconveniences further to article 976 C.C.Q., the courts should study all relevant circumstances, which could include the purpose of the enterprise, the number, duration and timing of events at stake, the ambient environment, zoning regulations, the existence of citizens' complaints about the alleged nuisance, as well as economic considerations.[22] While the anteriority of the practice is part of this analysis, the key element is whether the neighbourhood annoyances are qualified as abnormal or not.[23] The circumstances must reveal some severity and not the mere depriving of an advantage.[24] In assessing the use of the land and local usage, a review of the measures put in place to limit inconveniences is also relevant.[25]

In 2015, in *Plantons A et P inc.* v. *Delage*,[26] the Court of Appeal indicated that, when dealing with the strict liability regime established by article 976 C.C.Q., "the sole defense possible is to show the normality of the inconvenience and its reasonable character."[27]

In that case, the Superior Court had granted the plaintiffs' claim seeking damages and an injunction grounded in various legal sources, for the inconvenience related to smoke and odour associated with the activities of a heated greenhouse operated by the defendants. The Court of Appeal affirmed the decision on article 976 C.C.Q., while striking down the injunction.

Referring to an extensive doctrinal study of neighbourhood disturbances and article 976 C.C.Q.,[28] the Court of Appeal stated

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21. *Ibid*, par. 23, 24 and 25. See also: *Cayouette* v. *Boulianne*, 2014 QCCA 863, par. 24, where the Court of Appeal confirms that whether an inconvenience is normal or not must be assessed from an objective perspective.
22. *Ibid*, par. 20.
23. *Ibid*, par. 18-19.
24. *Ibid*, par. 19. See also: *Tomassini* v. *Maher (Succession de)*, 2014 QCCA 2088, par. 6.
25. *Ibid*, par. 22.
26. 2015 QCCA 7 ["*Plantons*"]. See also the judgment rendered on the same day by the same panel of the Court of Appeal, in *Coulombe* v. *Ferme Érital, s.e.n.c.*, 2015 QCCA 6.
27. *Plantons*, *supra* note 26, par. 79 (our translation).
28. Teboul, *supra* note 15.

that two criteria were key in analysing the inconveniences: the recurrence and the severity thereof.[29]

In its judgment, the Court of Appeal, while specifying that it did not necessarily endorse all comments found in doctrine, appeared to adopt an analytical framework by which one must initially determine whether the neighbourhood disturbances are recurrent – a finding that should be relatively easy to make – and then move on to assess the severity of the inconveniences – which calls for a circumstantial review of all relevant factors about the neighbourhood and the impugned practice.[30] It was generally stated that "recurrence" refers to continuous or repetitive trouble of a relatively long duration, while "severity" relates to real and substantial harm in light of the nature and situation of the lands, local usage, the timing of inconveniences, etc.[31]

In *Lefebvre* v. *Granby Multi-Sports*,[32] the Court of Appeal commented more particularly on the weight to be granted to the anteriority of a practice allegedly causing neighbourhood disturbances.

In that case, the plaintiffs were annoyed by a shooting range operated by the defendant company since 1977. The Superior Court had concluded that this neighbourhood inconvenience was normal "at 95%" and, in order to bring the situation within the tolerance limit yet avoiding impacting the business of the defendant too severely, it ordered that shooting be prohibited during two weeks of vacation in the summer. The plaintiffs contested and the Court of Appeal altered the conclusions to add compensatory damages and to prohibit shooting for longer periods in the summer.

In *Granby Multi-Sports*, the Court of Appeal reminded that the legality of the activity or the compliance with regulatory standards do not put an end to the analysis of the reasonableness of the interference pursuant to article 976 C.C.Q.[33] In each case, specific evidence is required about the inconveniences suffered and the environment in which they occurred.

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29. *Plantons*, *supra* note 26, par. 81.
30. *Ibid*, par. 81-82.
31. *Coulombe* v. *Ferme Érital, s.e.n.c.*, 2015 QCCA 6, par. 20.
32. 2016 QCCA 1547 (application for leave to appeal to the Supreme Court of Canada dismissed, 2017-02-23, #37302) ["*Granby Multi-Sports*"].
33. *Ibid*, par. 24-25 and 35. See also: *Hydro-Québec* v. *Bossé*, 2014 QCCA 323, par. 16-17.

The Court of Appeal nuanced the value of anteriority in neighbourhood annoyances cases, stating that the trial judge gave too much importance to this element. Citing various sources, the Court found that anteriority is not a defence in itself and does not create vested rights, insofar as it is the normality of the neighbourhood disturbances that is the test prescribed by article 976 C.C.Q.[34] Even if the situation may have been tolerable at some point, this did not prevent a finding that it was no longer the case. The obligation to suffer normal annoyances entails a corollary duty for the neighbour not to cause intolerable inconveniences, and a reasonable person would expect his neighbours to abide by this duty.[35]

The absence of an affordable solution to limit inconveniences does not preclude an inquiry into whether a reasonable person would accept the annoyances involved, and the Court suggested, inspired by economic logic, that one should seek to "restore a balance" so that each party bears the true costs of its activities, modifies its habits, or pays damages.[36]

More recently, the Court of Appeal in *Homans* v. *Gestion Paroi inc.*[37] expanded on the idea that article 976 C.C.Q implies the search for a balance between the rights of the parties.

In that matter, the plaintiffs were complaining of noise generated by a racetrack. The Superior Court had found abnormal annoyances within the scope of article 976 C.C.Q. and ordered the complete and definitive cessation of the racetrack activities, as well as indemnities. On appeal, the defendants submitted, amongst other arguments, that the trial judge had erred in opting for the complete closing of the racetrack.

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34. *Granby Multi-Sports*, *ibid*, par. 54-56. In *Courses automobile Mont-Tremblant inc.* v. *Iredale*, 2013 QCCA 1348, the Court of Appeal mentioned, in the context of a claim pursuant to section 20 of the *Environment Quality Act*, that while anteriority is not in itself a decisive factor, it remains a useful element in order to assess expectations of citizens and neighbours (par. 74).
35. *Ibid*, par. 69-70. In *Yazedjian* v. *Hassan*, 2010 QCCA 2205, the Court of Appeal indicated that: "In principle, orders made pursuant to article 976 C.C.Q. do not extend to requiring an owner to confer an advantage on his or her neighbour. Courts merely oblige the owner to limit the exercise of an incident of the right of ownership when it amounts to an actionable disturbance." (par. 31). The remedy provided by article 976 C.C.Q. is therefore essentially an "obligation to repair".
36. *Granby Multi-Sports*, *supra* note 32, par. 45.
37. 2017 QCCA 480 ["*Homans*"].

The Court of Appeal in *Homans* reminded that a consequence of article 976 C.C.Q. is to prohibit neighbourhood annoyances that are deemed to be abnormal, but this provision does not prohibit all the annoyances associated with societal life. This regime contains the very idea of a balance between everyone's rights and consequently imposes upon the courts the difficult task of achieving this balance, "by regulating activities, otherwise lawful, in a way that ensures that the disturbances caused do not exceed normal neighbourhood annoyances."[38] In this regard, activities should not be definitely prohibited unless they are unlawful, or unless it is clear that the annoyances that they cause cannot be reduced to an acceptable level.[39]

In *Homans*, the Ministry of the Environment had issued a certificate permitting the conduct of racetrack activities upon certain conditions deemed sufficient to attain a "fair balance" between one's right to exploit a company and the right of neighbours not to endure abnormal inconveniences.[40] The Court of Appeal therefore quashed the conclusion requiring the closure of the center and ordered that the owner of the land and operator of the center exploit the racetrack in accordance with these conditions.

As concerns damages, the Court of Appeal substituted the solidary condemnation of the defendants for "in solidum" liability, given that their responsibility was rooted in the strict liability regime of article 976 C.C.Q., irrespective of fault.[41]

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Overall, the case law subsequent to the decision of the Supreme Court in *Ciment du Saint-Laurent* essentially recognizes that the appreciation of neighbourhood disturbances in the context

38. *Ibid*, par. 116 (our translation).
39. *Ibid*, par. 117.
40. *Ibid*, par. 133.
41. In Quebec, solidarity between debtors only exists where it is expressly stipulated by the parties or provided by law: article 1525 C.C.Q. While the existence of separate faults concurring to a same injury could lead to solidarity (based on article 1480 C.C.Q.), "in solidum" liability is an exception developed by the courts as a way to hold different parties liable in regards to plaintiffs, in special circumstances. While an "in solidum" obligation will expose each debtor to liability for full damages, it does not carry other effects of solidarity such as interruption of prescription (article 2900 C.C.Q.).

of article 976 C.C.Q. calls for determining whether a reasonable person would accept a given inconvenience in the ordinary course of life, without compensation. This examination should be made by looking more particularly at the recurrence and severity of the interference. In this regard, compliance with applicable standards is not decisive, and the courts will weigh in the evidence to conclude on whether the inconveniences are abnormal or excessive, in view of all relevant circumstances.

2. NEIGHBOURHOOD DISTURBANCES IN THE CIVIL LAW CONTEXT

(a) Preamble: historical review of claims based on article 976 C.C.Q.

As of August 1st, 2017, research on the Canadian Legal Information Institute (CanLII) revealed that, since the decision of the Supreme Court of Canada in November 2008 in the matter of *Ciment du Saint-Laurent*, there have been a total of 442 judgments referring to article 976 C.C.Q. rendered by the Court of Appeal, the Superior Court and the Court of Quebec. By comparison, in the previous decade, it would appear that only 167 judgments were reported on CanLII in reference to article 976 C.C.Q.

While it is difficult to speculate on the source of this increased number of claims alluding to article 976 C.C.Q., one might think that the strict liability regime recognized by the Supreme Court of Canada in *Ciment du Saint-Laurent*, as well as the attention received by that judgment in the legal community and the general population alike, contributed to this development, along with a growing interest in environmental issues.

Out of the 442 judgments rendered in Quebec since *Ciment du Saint-Laurent,* about 10% were associated with class actions. Most of the civil claims also had a cause of action other than article 976 C.C.Q. (general civil liability, statutory liability, etc.).[42]

42. Typically, general civil liability claims associated with neighbourhood annoyances would be framed pursuant to article 1457 C.C.Q. which provides that "Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another" and "is liable for any injury he causes to another by such fault and is bound to make reparation for the injury". Statutory liability would result from legislation such as the

(b) The trends since *Ciment du Saint-Laurent*

Doctrine on article 976 C.C.Q. indicated early on that a finding of liability in this regard requires demonstrating three factors: 1) a neighbourhood relationship, 2) inconveniences resulting from the exercise of the right of ownership (or, alternatively, the use of the land), and 3) that those inconveniences be recognized as abnormal in view of all relevant circumstances.[43] It is typically the third element which gives rise to legal argument reported in the case law, considering that determining whether a given inconvenience is normal or not is context-specific and calls for a multifaceted analysis.

As recognized by courts and doctrine, the normality of neighbourhood disturbances must be appreciated from the point of view of a reasonable person placed in similar circumstances.[44]

Article 976 C.C.Q. has been described as requiring the demonstration of two main criteria, i.e. that the neighbourhood annoyances are recurring and severe.[45] Since 2015, when the Court of Appeal suggested in *Plantons* a test in two steps along the concepts of recurrence and severity of the inconveniences, this analytical framework has been regularly followed by the courts when dealing with claims pursuant to article 976 C.C.Q.[46] Some cases have also drawn a parallel between the requirement of the common law of nuisance to prove a "substantial and unreasonable" interference as described in *Antrim*, and the need to show recurrent and severe annoyances pursuant to article 976 C.C.Q.[47]

Environment Quality Act and related regulations. Some articles of the C.C.Q. also include specific rules of neighbourhood relationships regarding waters (art. 979-983 C.C.Q.), trees (art. 984-986 C.C.Q.), views (art. 993-996 C.C.Q.) and common fences and works (art. 1002-1008 C.C.Q.).

43. M. Gagné, "Les recours pour troubles de voisinage : Les véritables enjeux", in Service de la formation permanente, Barreau du Québec, *Développements récents en droit de l'environnement*, vol. 214, Montréal, Éditions Yvon Blais, 2004, p. 73-76.
44. *Paspébiac*, supra note 19, par. 24-25, and Teboul, *supra* note 15, p. 119. See also : *Larue* v. *TVA Productions inc.*, 2011 QCCS 5493, par. 184.
45. Teboul, *supra* note 15, p. 121-122.
46. For instance, see *Delsemme* v. *Lapointe*, 2016 QCCS 4305, par. 81-82 and 86-91; *Langlois* v. *9204-5996 Québec inc.*, 2015 QCCQ 5195, par. 18 and 74-75.
47. *Beaudet* v. *Boisbriand (Ville de)*, 2015 QCCQ 7997, par. 22-30; *Osmachenko* v. *Bouveret*, 2015 QCCQ 13878, par. 64-65; *Bourassa* v. *Gagnon*, 2017 QCCQ 8159, par. 59-61.

The concept of recurrence requires proof of an element of repetition and continuity over time.[48] However, recurrence pertains to the inconveniences suffered, and not necessarily to the activity which caused them: hence, it has been decided that a unique act which occurred at a specific point in time may not prevent article 976 C.C.Q. to apply, insofar as the consequences of that act persist.[49]

As for severity, article 976 C.C.Q. calls more specifically for analysing the normality of the inconveniences according to the location of the lands, their nature and local usage, to which should be added the timing of the inconveniences.[50] These factors must be pondered according to overall circumstances, and their respective value can therefore vary from one case to another.[51] In assessing severity, the courts have often reiterated that the evidence must reveal something beyond the mere deprivation of an advantage.[52]

– Articles 976 and 1457 C.C.Q.

Legal proceedings pursuant to article 976 C.C.Q. are sometimes referring to other sources of liability, such as article 1457 C.C.Q. and abuse of right (article 7 C.C.Q.). These are distinct liability regimes and they are governed by different criteria; it is therefore important for the parties to make proper allegations, short of which the courts can dismiss some issues.[53]

A claim under article 976 C.C.Q. is also likely to become time-barred earlier than under article 1457 C.C.Q., as the limitation period is starting to run in the first case as soon as the source of the inconvenience is noticed, even if the identity of the liable party is unknown. In the context of a motion for summary dismissal, this led the Superior Court to conclude that a claim in damages for

48. Teboul, *supra* note 15, p. 123-125 and 142.
49. *Liberge* v. *Babin*, 2015 QCCS 5119, par. 31, 32, 37 and 49. In this matter, flooding and land subsidence caused to an adjacent property by excavation works were deemed to constitute neighbourhood annoyances.
50. Teboul, *supra* note 15, p. 125-134. See also: *Coulombe* v. *Ferme Érital, s.e.n.c.*, 2015 QCCA 6, par. 20.
51. Teboul, *ibid*, p. 125.
52. *Paspébiac*, *supra* note 19, par. 19; *Tomassini* v. *Maher (Succession de)*, 2014 QCCA 2088, par. 6; *Delsemme* v. *Lapointe*, 2016 QCCS 4305, par. 84; *Merola* v. *Pineau*, 2015 QCCS 2963, par. 27; *Larue* v. *TVA Productions inc.*, 2011 QCCS 5493, par. 204.
53. *Larue* v. *TVA Productions inc.*, 2011 QCCS 5493, par. 163-168.

contaminated ground based on article 976 C.C.Q. was prescribed whereas the claim made in civil liability could continue,[54] given that the inconveniences suffered from an adjacent land had been known for a while, although the identity of the party potentially at fault was uncertain. However, when damages are ongoing, prescription will not bar an injunction order.[55]

In civil law matters, whether a claim in damages is granted pursuant to article 976 C.C.Q. or article 1457 C.C.Q., the valuation of damages will be done according to the same principles.[56] However, when more than one party contributed to the damage, liability will be "in solidum" because solidarity cannot be presumed and is traditionally associated with fault, while article 976 C.C.Q. creates a strict liability regime.[57]

A consistent line of case law has held that harassment, insults, threats, aggressions between neighbours, and all deliberate acts intended to harm others, are not normal inconveniences within the scope of article 976 C.C.Q.: they can lead to liability pursuant to article 1457 C.C.Q., and one party cannot invoke article 976 C.C.Q. to escape liability.[58]

– Nature *vs* Human Activities

Generally speaking, under article 976 C.C.Q., inconveniences connected to the natural environment are less susceptible to be

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54. *9124-9797 Québec inc.* v. *Immeubles Karka inc.*, 2016 QCCS 3045 (par. 44-47); motion seeking leave to appeal dismissed: 2016 QCCA 1342. In this case, given a transfer of ownership, there was uncertainty as regards the identity of the defendant potentially at fault, but it was sufficiently clear that the contamination was originating from a designated land.
55. *Rabin* v. *Syndicat des copropriétaires Somerset 2060*, 2012 QCCS 4431, par. 31 and 34.
56. *Larue* v. *TVA Productions inc.*, 2011 QCCS 5493, par. 173-174.
57. *Homans*, *supra* note 37, par. 160-184. When different defendants are liable under articles 976 and 1457 C.C.Q., this will also result into an "in solidum" condemnation : *Bell Canada* v. *9085-0561 Québec inc.*, 2014 QCCQ 2272, par. 46-49 and 53.
58. *Guillette* v. *Béchard*, 2015 QCCS 631, par. 45 and 75; *Grilo* v. *Hachey*, 2010 QCCS 5424, par. 46-47; *Lacoste* v. *Fiducie de la Ferme Lacoste*, 2014 QCCS 2948, par. 123-124 and 130; *Poiré* v. *Sévère*, 2012 QCCS 1619, par. 19-20 and 60 vs 65/87; *Terrana* v. *Piunno*, 2014 QCCS 3295, par. 79 and 81. In other words, the malicious use of property cannot be justified by article 976 C.C.Q.: see *Da Silva* v. *Thélot*, 2017 QCCS 1103, par. 44-46.

compensated, as opposed to neighbourhood annoyances which are closely associated with human activities.

For instance, the presence of pine needles in a residential environment where trees are abundant was deemed to be a normal inconvenience, rather than a damage to the plaintiff's property.[59] In another case, the natural phenomenon of rock falling from a mountain following the passing of time and seasons, was found not to be a neighbourhood annoyance within the terms of article 976 C.C.Q.[60] Neither was the rupture of a beaver dam causing damages to nearby properties.[61] Likewise, rain, snow and ice falling from the roof of two contiguous houses in existence for many years were not considered abnormal neighbourhood disturbances.[62] Interestingly, it was decided that neighbours must tolerate the vertical growth of cedar hedges even though it obstructed their view because this was resulting from a natural process, yet the cutting of lateral branches was ordered because it was proven to cause a serious nuisance.[63]

Cases where inconveniences are related, at least partly, to a natural phenomenon have also led the courts to reaffirm the necessity of proving a causal link between the activity at stake and the neighbourhood annoyances claimed. For instance, in situations where it was alleged that shore erosion was being increased by the operation of a dam, the plaintiffs had to prove on a balance of probabilities that the human activity was significantly altering this natural process, a task which has often failed.[64] Similarly, in the context of seasonal flooding, the Court dismissed a claim under article 976 C.C.Q. because there was no proof of a causal link between the accumulation of water and the remodelling of an adjacent land.[65]

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59. *Corriveau* v. *Gélinas*, 2015 QCCS 2572, par. 23 (confirmed at 2016 QCCA 943). See also: *Bergeron* v. *Simard*, 2009 QCCS 4240, par. 19 and *Gagné* v. *Roussel*, 2016 QCCS 1954, par. 24.
60. *Girouard* v. *Mont St-Hilaire (Ville de)*, 2011 QCCS 4273, par. 134.
61. *Association du Lac Reardon* v. *Immeubles Phang inc.*, 2008 QCCQ 12798, par. 70.
62. *Pinsonneault* v. *Ouellette*, 2012 QCCS 6296, par. 42.
63. *Dionne* v. *Blackburn*, 2017 QCCS 1463, par. 209, 222-224 and 227.
64. *Lampron* v. *Énergie Algonquin (Ste-Brigitte) inc.*, 2013 QCCS 3989, par. 174-180 and 202-204; see also *Jean* v. *Vibert*, 2012 QCCS 4248, par. 193-194. For a class action application of the same issue, see: *Association des résidents riverains de La Lièvre inc.* v. *Québec (P.G.)*, 2015 QCCS 5100, par. 748-749.
65. *Delage* v. *Lefebvre*, 2013 QCCS 2282, par. 63-64.

– Type of Neighbourhood

Article 976 C.C.Q. recognizes that the location of the lands and their nature are relevant factors. This contextual approach has led the courts to review the type of neighbourhood in which the inconveniences take place, including zoning regulations, in order to determine the fair expectations of neighbours.

It is obvious that what neighbours must tolerate will be different for those living in the country or in a city, in a residential or in a commercial zone.[66]

For instance, in *Paspébiac*, the Court of Appeal stressed that the activities were taking place in a commercial zone, reminding that it does not appear reasonable to require absolute silence, even in the countryside.[67] In a case where the plaintiffs had bought their house in an industrial area, the Court stated that they had to expect that the operation of a nearby business would create more inconveniences, as opposed to a dwelling located in a purely residential sector.[68] Those who purchased a house next to a commercial area must tolerate traffic and occasional noise caused by a small hotel resort built shortly after.[69] Similarly, people living in an agricultural environment may have to tolerate some fumes and odours.[70] However, excessive accumulation of mud from farming activities could constitute a nuisance, even in an agricultural zone.[71]

In an urban setting, having lawful lines of sight over your neighbours' property is not a neighbourhood annoyance within the meaning of article 976 C.C.Q., even though it translates into some loss of privacy.[72] It has also been said that, in cities, public construction works as well as road and aqueduct repairs are the norm, such that a claim failing to show abnormal inconveniences resulting therefrom will not succeed.[73]

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66. *Larue* v. *TVA Productions inc.*, 2011 QCCS 5493, par. 197-198; see also *Beaulieu* v. *Doucet*, 2017 QCCQ 4647, par. 17-18.
67. *Paspébiac*, *supra* note 19, par. 19-20.
68. *Gestion Gustave Brunet* v. *Brunet*, 2010 QCCS 4850, par. 57.
69. *Bélanger* v. *GPR Investissement inc.*, 2017 QCCS 951, par. 92-97 (on appeal).
70. *Coulombe* v. *Ferme Érital*, 2015 QCCA 6, par. 21-22.
71. *Langlois* v. *9204-5996 Québec inc.*, 2015 QCCQ 5195, par. 75-76.
72. *Cayouette* v. *Boulianne*, 2014 QCCA 863, par. 23; see also *Grenier* v. *Gestion BJBG inc. (Habitations Boivin)*, 2016 QCCS 5465, par. 77-79.
73. *Gagné* v. *Montréal (Ville de)*, 2009 QCCQ 6224, par. 37-41.

– Applicable Normative Standards

Although the legality of the activity or the compliance with regulatory standards is not a defence in itself within the regime of article 976 C.C.Q., courts sometimes use the applicable normative framework to set the threshold beyond which neighbourhood annoyances could give rise to remedies. As illustrated in the examples below, the nature of the standards involved has an impact on their probative value, but this will not ultimately change the test for an article 976 C.C.Q. claim.

In *Granby Multi-Sports*, where the activities of a shooting range were at stake, the Superior Court had referred to a municipal by-law regulating noise to establish the level of tolerance pursuant to article 976 C.C.Q.[74] This led the trial judge to prohibit shooting during two weeks of vacation in the summer, without awarding damages. The Court of Appeal intervened to add compensatory damages and to prohibit shooting activities for longer periods in the summer. In doing so, the Court of Appeal noted that the municipal by-law was not decisive as it could have been influenced by political considerations other than the test requiring neighbourhood disturbances to be assessed from a reasonable person's view.[75]

However, in *Cloutier* v. *Syndicat de la copropriété les Habitations St-Lambert sur le golf*,[76] the Superior Court dismissed a claim for neighbourhood disturbances related to the soundproofing of a condominium unit. Recognizing that compliance with a standard is not an obstacle to a finding of abnormal inconveniences, the Court nonetheless noted that it was a relevant contextual criteria.[77] In view of the evidence adduced, the Court reviewed relevant soundproofing standards and specifications of the condo association and compared them with norms recognized in the industry.[78] While those norms were met, the Court recognized that the soundproofing quality of the plaintiff's condo was lower than that of other

74. 2015 QCCS 731, par. 71-73.
75. *Granby Multi-Sports*, *supra* note 32, par. 28-35. See also *Hydro-Québec* v. *Bossé*, 2014 QCCA 323, par. 16, in which the Court of Appeal stated that municipal by-laws are not conclusive insofar as an article 976 C.C.Q. claim is concerned.
76. 2016 QCCS 5623.
77. *Ibid*, par. 43, 54 and 67.
78. *Ibid*, par. 62.

units, but this was insufficient to qualify as an abnormal inconvenience under article 976 C.C.Q.[79]

Even when a normative standard is not met, courts proceed cautiously and require additional evidence before concluding on liability pursuant to article 976 C.C.Q. In *Émond* v. *St-Adolphe-d'Howard (Municipalité de)*, the Superior Court found that both the city and the defendants had committed a fault by not respecting or failing to ensure compliance with the by-law regulating noise, in relation to the operation of a marina and bistro.[80] The Court went on to examine whether there was a valid claim under article 976 C.C.Q. and found so only after reviewing the testimony of numerous lay and expert witnesses, which led to a finding of abnormal neighbourhood annoyances that justified damages.[81]

In *Thibodeau* v. *Poissant*,[82] the Superior Court granted an injunction prohibiting the defendant from conducting excavation work which was causing a neighbourhood disturbance because of the truck traffic it generated.[83] Notably the injunction order was justified by the fact that, while the defendant had obtained licences from the city to operate its machinery, the work was being conducted in a zone where commercial activities were not allowed.

By contrast, in *Homans*,[84] the Ministry of the Environment had issued a certificate permitting the operation of a racetrack upon meeting certain conditions. The Court of Appeal quashed the trial judge's conclusion to close the center and replaced it with an order to respect the conditions prescribed by the Ministry of the Environment, which embodied a "fair balance" between the rights of all parties.[85] The Court of Appeal cautioned that courts should not reflexively follow the conditions determined by the environmental agency, but in view of the evidence adduced in this case, it

79. *Ibid*, par. 65-67.
80. 2009 QCCS 4132, par. 240, 246-247. The apportionment of liability between the co-defendants was modified by the Court of Appeal in *Lussier* v. *Émond*, 2011 QCCA 1307.
81. *Ibid*, par. 248-261.
82. 2015 QCCS 2244.
83. *Ibid*, par. 94-114.
84. *Supra* note 37.
85. *Ibid*, par. 132-134.

was deemed appropriate to order defendants to comply with the specific conditions set out in the certificate.[86]

All things considered, even though normative standards are not determinative in deciding whether neighbourhood annoyances are abnormal or not, the courts still take into account this factor as part of the contextual analysis conducted under article 976 C.C.Q. The nature of the applicable framework – whether it is an isolated standard, or if it is supported by reference to other recognized norms, an independent public agency or valid extrinsic evidence – may be used to set a balance between activities deemed socially acceptable or not.

– Anteriority of Practice

The Court of Appeal stated in *Paspébiac* that there is no vested right for a neighbour to enjoy an environment that will never change, yet the anteriority of a practice is still part of the analysis under article 976 C.C.Q.[87]

Indeed, a person who has chosen to live near a recognized source of inconvenience is deemed to accept, to some extent, the normal disturbances of the surroundings.[88] In this regard, the courts will sometimes consider the foreseeability of inconveniences for a neighbour in a particular setting. In dismissing a claim in damages pursuant to article 976 C.C.Q., the Superior Court held that plaintiffs could not be compensated for temporary noise and dust associated with construction works, as one plaintiff was aware that a big condominium project was about to start next to the property he purchased, while others had purchased their unit when the construction works had already started.[89]

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86. *Ibid*, par. 136-137. The Court of Appeal refused to authorize activities of the defendants by referring to conditions found in "any certificate authorized by the Ministry of Environment which could be issued in the future", and expressly integrated in its conclusions the specific conditions of the certificate filed in the case.
87. *Paspébiac*, *supra* note 19, par. 15-19; see also *Courses automobiles Mont-Tremblant inc.* v. *Iredale*, 2013 QCCA 1348, par. 74.
88. *Paspébiac*, *ibid*, par. 19.
89. *Copropriété 889 Richelieu* v. *Groupe Norplex inc.*, 2015 QCCS 255, par. 95 and 137-145 (on appeal).

In another case, plaintiffs who had purchased a residence adjacent to a restaurant located in a commercial zone filed proceedings for an injunction and damages because of the noise generated by the restaurant's ventilation system, amongst other things. The Court dismissed the claim regarding the ventilation system, noting that the plaintiffs had visited the premises prior to purchasing the property and were told that the system could cause noise.[90]

That said, while anteriority continues to be relevant, the most recent case law suggests that it has a limited role in assessing neighbourhood disturbances, as the focus is rather on the recurrence and severity of the inconveniences.[91]

– Visit of Premises by the Court

Because of the contextual analysis implied by article 976 C.C.Q., judges will sometimes visit the premises to assess neighbourhood annoyances.

While the existence of a nuisance must be analysed according to the objective standard of a reasonable person placed in similar circumstances, a judge's visit to the premises could be useful, notably when the nature of the inconvenience is qualitative and less readily weighed against standardized norms. For instance, a visit enabled the Court to determine that the brightness from a business' spotlights affecting a nearby residence was mostly reasonable, while corrective measures were ordered for the balance.[92] In another case, after having witnessed the line of sight from a solarium, the Court concluded that this addition to a condo would not result in an abnormal loss of panorama and privacy for the neighbour.[93]

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90. *Leclerc* v. *Omer Gendron (1986) inc.*, 2016 QCCS 2153, par. 58-59.
91. For instance, see *Granby Multi-Sports*, *supra* note 32, par. 54-56, 64 and 71, and *Delsemme* v. *Lapointe*, 2016 QCCS 4305, par. 81-83. In a class action matter, see *Belmamoun* v. *Brossard (Ville de)*, 2015 QCCS 2913, par. 373 (2017 QCCA 102).
92. *Gouin-Roy* v. *St-Georges Chevrolet Pontiac Buick GMC inc.*, 2010 QCCS 5950, par. 62 and 87-93.
93. *Delsemme* v. *Lapointe*, 2016 QCCS 4305, par. 91-95. For another example where a judicial visitation helped to determine that an appendix to a property did not result in abnormal loss of intimacy or daylight for the neighbour, see: *Rivard* v. *St-Arnaud*, 2014 QCCS 2031, par. 102 and 109-110.

Interestingly, in one case where an injunction was sought to prevent the owner of an urban residence from adding a third floor, the judge not only visited the premises involved but also requested the building of a temporary structure simulating the new construction, in order to assess its impact on the view, amount of daylight and privacy of the neighbours.[94] After a visit to the residence so modified, the Court held that there would not be abnormal inconvenience within the meaning of article 976 C.C.Q., and it dismissed the claim.

– Behaviour of the Defendant

As confirmed by the Supreme Court of Canada in *Ciment du Saint-Laurent*, article 976 C.C.Q. establishes a strict liability regime in which the essential consideration is "the result of the owner's act rather than […] the owner's conduct."[95] However, the case law reveals that the behaviour of the defendant remains a relevant factor.

For instance, in *Larue* v. *TVA Productions inc.*,[96] the Superior Court assessed the impact of the filming of a television show in a residential area over a four-month period. Applying article 976 C.C.Q., the Court noted that the conduct of the neighbours and attempts to mitigate inconveniences are relevant.[97] The television production team had been proactive in informing the neighbours of the upcoming filming, meeting with them and suggesting solutions to minimize inconveniences,[98] whereas the plaintiffs did not try to resolve the issue and preferred to build up a legal case to claim damages.[99] In the end, the Court found that there had been some neighbourhood disturbances, but that the majority of them were not abnormal.[100]

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94. *Raymond* v. *Goldberg*, 2008 QCCS 5925, par. 85-93 and 235-236.
95. *Ibid*, par. 86.
96. 2011 QCCS 5493.
97. *Ibid*, par. 199-200.
98. *Ibid*, par. 256-258.
99. *Ibid*, par. 262
100. *Ibid*, par. 266-267. The Superior Court decided that part of the increased traffic in the residential area constituted abnormal inconveniences (par. 349-350), but not all of it (par. 317 and 335), and it also recognized limited damages for the outdoor lighting structures (par. 341-342). However, given the attitude of plaintiffs, which was qualified by the Court as a fault, defendants were exonerated to pay most of the damages (par. 356).

The case law acknowledges that measures put in place by the defendant to limit neighbourhood annoyances are to be considered, and could be conclusive insofar as they bring the inconveniences within the range of normality.[101] Claims pursuant to article 976 C.C.Q. were dismissed where: the defendant had taken steps to limit the force, direction and duration of the noise of a heat pump;[102] a wood transformation plant changed its equipment to lower noise and dust, pursuant to recommendations by the environmental agency;[103] the owner of a bistro installed a commercial ventilation hood which reduced the odours;[104] a city set up a higher protective net to prevent most balls from landing on a property located next to a ballfield.[105] In all of these cases, the courts concluded that the mitigation measures had reduced inconveniences to a normal level, or that the plaintiffs had failed to meet their burden to prove otherwise.

These examples are reminiscent of the Supreme Court's suggestion in *Antrim* that evidence that the defendant acted with all reasonable care to avoid harm may have a bearing on the analysis related to nuisance.[106] While reasonable conduct will not *per se* preclude a finding of liability, showing that best practices were adopted to improve the situation could be relevant, provided that such measures indeed reduced the annoyances to an acceptable level.

– Damages *vs* Injunctive Orders

When dealing with judicial claims based on article 976 C.C.Q., courts have made different comments on evidentiary issues, depending on whether the plaintiff was seeking damages or an injunctive order.

In order to prove the severity of damages claimed for physical inconvenience, the Court of Appeal indicated in *Plantons* that

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101. *Paspébiac*, *supra* note 19, par. 20; and sources cited hereinafter. See also: *Gestion Paroi inc.* v. *Gestion Gérard Furse inc.*, 2015 QCCS 130, par. 466-467 (2017 QCCA 480) and *Mouhoub* v. *Bouvier*, 2013 QCCQ 12688, par. 31.
102. *Dionne* v. *Boutin*, 2010 QCCS 2732, par. 7-8.
103. *Sirois* v. *Rosario Poirier inc.*, 2009 QCCQ 1303, par. 101-102, 128, 149-151, 176 and 179.
104. *Dubois* v. *7024231 Canada inc.*, 2014 QCCS 1800, par. 48-50
105. *Larouche* v. *Ascot (Municipalité d')*, 2014 QCCS 2664, par. 37-42.
106. *Antrim*, *supra* note 2, par. 29.

expert evidence is not always necessary.[107] However, one single and purely subjective piece of testimony will be insufficient, and alleged inconveniences will have to be further corroborated.[108] In situations with a large group of plaintiffs, the courts will sometimes sort the group into different categories based on similar circumstances, and will award average indemnities to these groupings.[109]

Even in situations where expert evidence is useful or necessary, for instance when the neighbourhood disturbances could be associated with normative standards, such evidence must be contextualized. For example, an acoustic test in the abstract, irrespective of the surrounding human activity, may be inconclusive, and the Court has thus taken into consideration lay evidence as well.[110] By contrast, a claim for loss of market value will usually require expert evidence and proof of probable future damages, rather than only temporary inconveniences.[111]

Insofar as article 976 C.C.Q. and injunctive orders are concerned, courts remain cautious about limiting lawful economic activities.[112]

Indeed, although the utility of the defendant's conduct is not a recognized criterion in article 976 C.C.Q., as it is in the common law of nuisance, the courts are not insensitive to economic considerations. They will usually require compelling evidence of continuous abnormal inconveniences before curtailing associated activities and, in doing so, they will try to find a fair balance between the parties' interests.[113] As the Court of Appeal recently

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107. *Supra* note 26, par. 80 and 87.
108. *Guay* v. *TGC MX inc.*, 2015 QCCQ 5743, par. 7; *Lamarre* v. *Dugré*, 2016 QCCQ 13046, par. 27.
109. For example, *Gestion Paroi Inc.* v. *Gestion Gérard Furse inc.*, 2015 QCCS 1305, par. 485-490 (2017 QCCA 480), where the subgroups took into consideration the distance from the source of the disturbance, the levels of noise, and the periods of occupation of the residents.
110. *Rehmat* v. *Montazami*, 2013 QCCS 1745, par. 99-102.
111. *Delage* v. *Lefebvre*, 2013 QCCS 2282, par. 37, 45-48 and 66; *Bergeron* v. *Yves Fontaine & Fils inc.*, 2014 QCCS 4266, par. 33, 84-91; *Petrecca* v. *Théodore*, 2010 QCCS 5807, par. 202-257.
112. In Quebec, as in the common law, injunction is a discretionary remedy, governed by articles 509-515 C.C.P.
113. For instance, see *Plantons*, *supra* note 26, par. 93-96, where the injunction order was dismissed for lack of proof regarding ongoing annoyances; and *Homans*, *supra* note 37, par. 133-134, where the injunction was curtailed to what was deemed necessary to contain inconveniences within tolerable limits.

held in *Homans*, the courts should refrain from definitely prohibiting lawful activities unless it is clear that the annoyances caused cannot be reduced to an acceptable level.[114]

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While not exhaustive, this review of the case law rendered since the judgment in *Ciment du Saint-Laurent* in matters involving neighbourhood annoyances is instructive about the way courts adjudicate those claims.

When an article 976 C.C.Q. claim is coupled with another source of liability, the courts are attentive in addressing these distinctively. To determine whether annoyances are reasonable or not, the type of neighbourhood and the impact of applicable normative standards will be analysed in light of all circumstances, including mitigation measures put in place to limit inconveniences.

The remedies granted in each case will be influenced by the kind of evidence presented. While expert evidence is often adduced, testimony by ordinary witnesses is frequently used to assess the severity of the inconvenience, and judges will sometimes visit the premises to complete their findings. Damages and injunctive orders, if granted, will be limited to annoyances incompatible with the duty of tolerance expected amongst neighbours.

3. CLASS ACTIONS AND NUISANCE

(a) The scope of reliefs at the certification stage

Class actions for neighbourhood annoyances based on article 976 C.C.Q. have developed over time, typically seeking damages as a remedy and sometimes an injunction.

Pursuant to article 575 of Quebec's *Code of Civil Procedure* (C.C.P.), before authorizing a class action, the Court must be satisfied that there are common issues of fact or law, that there is an appearance of right for the claim, that the class action is an adequate procedural vehicle, and that the proposed class representative is appropriate.

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114. *Homans*, *supra* note 37, par. 117.

As the Supreme Court emphasized that the authorization of a class action is a filtering mechanism that should not address the merits of the dispute,[115] and since it was confirmed in *Ciment du Saint-Laurent* that article 976 C.C.Q. establishes a strict liability regime, defendants have been left with limited room to contest the validity of a nuisance claim at the certification stage. The recent case law of the Court of Appeal also tends to facilitate the exercise of those class actions.[116]

Research on CanLII reveals that, since the decision of the Supreme Court of Canada in November 2008 in *Ciment du Saint-Laurent*, there have been, as of August 1st, 2017, 17 judgments certifying a class action reporting article 976 C.C.Q. as a cause of action. A great majority of these claims were also bringing forth another cause of action, such as civil negligence. During the same period, only two motions to certify a class action invoking 976 C.C.Q. were not certified,[117] and one was partly rejected post-certification further to a motion for summary dismissal.[118]

In *Infineon*, the Supreme Court indicated that, in order to justify the certification of a class action, mere assertions are insufficient without some factual underpinning, which must be accompanied by "some evidence to form an arguable case".[119] When applied to the field of neighbourhood disturbances, while the courts have recognized that full evidence or expert evidence is not required at the certification stage,[120] some objective elements of proof should

115. *Infineon Technologies AG* v. *Option consommateurs*, [2013] 3 S.C.R. 600, par. 59 and 68 ["*Infineon*"]; *Vivendi Canada Inc.* v. *Dell'Aniello*, [2014] 1 S.C.R. 3, par. 37.

116. Since the adoption of article 585 C.C.P. in 2016, the Court of Appeal dismissed leave for a judgment certifying a class action involving neighbourhood annoyances: see *Énergie éolienne des Moulins, s.e.c.* v. *Labranche*, 2016 QCCA 1879. It also recently overturned the decision of the Superior Court refusing to certify such type of class action in two matters: *Belmamoun* v. *Brossard (Ville de)*, 2017 QCCA 102 and *Blouin* v. *Parcs éoliens de la Seigneurie de Beaupré 2 et 3, s.e.n.c.*, 2016 QCCA 77. See also: *Carrier* c. *Québec (P.G.)*, 2011 QCCA 1231, in which the Court of Appeal certified a class action based on article 976 C.C.Q. that had been dismissed by the Superior Court.

117. *Dupuis* v. *Canada (P.G.)*, 2014 QCCS 3997; *Benizri* v. *Canada Post Corporation*, 2017 QCCS 908.

118. *Regroupement des citoyens contre la pollution* v. *Alex Couture*, 2011 QCCS 4262, in which the claims for injunction, loss of property value and punitive damages were summarily dismissed, post-certification, while the claim in damages was maintained.

119. *Infineon*, *supra* note 115, par. 134.

120. *Kennedy* v. *Colacem Canada inc.*, 2015 QCCS 222 ["*Colacem*"], par. 59. See also *Carrier* c. *Québec (P.G.)*, 2011 QCCA 1231, par. 50-51.

be adduced about the abnormality of the inconvenience. Depending on the nature of the allegations, and although the best evidence is not always required,[121] there must still be some evidentiary foundation to the claims being made.

In this regard, the courts have sometimes excluded at certification some class members which did not have an appearance of right as a "neighbour", in obvious cases.[122] The definition of the group is a factual issue that can be modified by the Court at any time.[123]

On a practical level, one of the areas where class actions for neighbourhood annoyances have not been certified is where allegations of health claims were not supported by any evidence of prejudice other than the potential risk of future damages, which is not recognized in Quebec law as a source of compensation.[124] Following the same rationale, claims for alleged loss of property value without evidence of actual prejudice have also been discarded.[125]

That said, when certifying class actions for neighbourhood annoyances, it is mainly the issues of punitive damages and injunction that have raised questions.

Indeed, early on, the Supreme Court stressed the significance of class actions in environmental law matters, stating that

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121. For instance, reports on measurements of decibels were filed in support of a class action regarding noise that was certified in *Coalition contre le bruit* v. *Shawinigan (Ville de)*, 2012 QCCS 4142, but in *Infineon* the Supreme Court was satisfied that press releases containing no specific reference to Quebec were sufficient to establish an "arguable case" regarding the international impact of an alleged price-fixing conspiracy (par. 84 and 134).

122. For examples, see *Langevin* v. *Bouchard*, 2013 QCCS 4488, par. 48-51 and 109; *Lalande* v. *Compagnie d'arrimage de Québec ltée*, 2014 QCCS 5035, par. 50 and 78.

123. Article 588 C.C.P.

124. For instance, see *Colacem*, *supra* note 120, par. 102-103 and *Lalande* v. *Compagnie d'arrimage de Québec ltée*, 2015 QCCS 3620, par. 40-44 and 63-67. See also: *MacMillan* v. *Abbott Laboratories*, 2012 QCCS 1684, par. 95-96 (confirmed in appeal at 2013 QCCA 906) and case law referred to, including *Laferrière* v. *Lawson*, [1991] 1 S.C.R. 541.

125. *Lalande* v. *Compagnie d'arrimage de Québec ltée*, 2015 QCCS 3620, par. 46 and 63-67. This type of claim was summarily dismissed post-certification because of lack of relevant expertise in *Regroupement des citoyens contre la pollution* v. *Alex Couture inc.*, 2011 QCCS 4262, par. 43-58. See also, in the context of an Ontarian class action based on allegations of private nuisance: *Smith* v. *Inco Limited*, 2011 ONCA 628, par. 55, 57 and 67.

they serve efficiency and justice in aggregating similar individual actions to avoid unnecessary duplication, by allowing litigation costs to be divided over a number of plaintiffs, and in ensuring that wrongdoers do not ignore their obligations to the public.[126] In *Ciment du Saint-Laurent*, the Supreme Court also pointed out that the acceptance of no-fault liability under article 976 C.C.Q. furthers environmental protection objectives, and reinforces the application of the polluter-pay principle.[127]

These ideas often lead plaintiffs in class action claims for alleged ongoing neighbourhood disturbances to include a request for punitive damages, based on section 49 of the Quebec *Charter of human rights and freedoms*.[128]

Insofar as article 976 C.C.Q. establishes a strict liability regime, irrespective of the concept of fault, some commentators have said that this is incompatible with a claim for punitive damages.[129] Indeed, even though the Supreme Court recognized the autonomy of exemplary damages based on the *Charter* in the case of *de Montigny* v. *Brossard (Succession)*,[130] this type of claim is nonetheless subject to proof of an "unlawful and intentional" interference with a right protected by the *Charter*, which typically implies demonstrating a fault was committed.

In *de Montigny*, the Supreme Court mentioned that the concept of an unlawful act on which section 49 of the *Charter* is based often coincides with the notion of civil fault, yet it could apply to "acts and conduct that do not correspond to the concept of civil fault and thus do not fall within the scope of Quebec's general civil

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126. *Western Canadian Shopping Centers Inc.* v. *Dutton*, [2001] 2 S.C.R. 534, par. 27-28 and 29.
127. *Ciment du Saint-Laurent*, *supra* note 1, par. 80.
128. CQLR c C-12 ["Quebec *Charter*"]. In neighbourhood annoyances claims, plaintiffs usually refer to section 6 of the *Charter*, that provides a "right to the peaceful enjoyment and free disposition of his property", or section 46.1 that recognises a "right to live in a healthful environment".
129. P.-C. Lafond, "L'heureuse alliance des troubles de voisinage et du recours collectif: portée et effets de l'arrêt *Ciment du Saint-Laurent*", (2009) 68 *R. du B.* 385, p. 434. See also: M. Gagné and M. Gauvin, "Le droit à un environnement sain et respectueux de la biodiversité: valeur symbolique ou effet concret ?" in Service de la formation continue, Barreau du Québec, *Développements récents en droit de l'environnement*, Montréal, Éditions Yvon Blais, 2009, p. 23-26.
130. [2010] 3 S.C.R. 64 ["*de Montigny*"].

liability system."[131] That said, a finding of abnormal inconveniences pursuant to article 976 C.C.Q. does not equate to an "unlawful" interference with a *Charter* right. In addition, the condition to show an "intentional" interference remains. As such, a claim for punitive damages in the context of a class action based solely on article 976 C.C.Q. is open to challenge at the certification stage.[132]

Moreover, in cases where there are coexistent allegations of civil negligence and abnormal neighbourhood disturbances based on article 976 C.C.Q., courts have been reluctant to certify a request for punitive damages without factually-specific allegations of an unlawful and intentional interference.[133] In other words, affirming conclusions in punitive damages is not sufficient if this is not supported by some factual background.

Another issue in the field of class action and neighbourhood annoyances that has attracted critique is whether an injunction could, in and of itself, be claimed as a remedy.

Initially, trial courts casted doubts about the appropriateness of a "collective injunction" because, while class actions are procedural vehicles enabling one claimant to seek a remedy for a greater group that would otherwise be impracticable, an individual injunction could achieve the same result at lower costs.[134]

Over time, the Court of Appeal however described injunction as a "remedy of choice" in the context of class actions for neighbourhood disturbances, stating that it should not be struck out at the certification stage.[135] Nonetheless, it bears remembering that

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131. *Ibid*, par. 44.
132. As well, in *Regroupement des citoyens contre la pollution* v. *Alex Couture inc.*, 2011 QCCS 4262, the claim for punitive damages was summarily dismissed post-certification on the basis that it required a fault, while article 976 C.C.Q. established a strict liability regime (par. 76-82).
133. *Colacem*, *supra* note 120, par. 160-164. See also: *Gaudet* v. *P & B Enterprises ltée*, 2011 QCCS 5867, par. 58-61; *Regroupement des citoyens du quartier St-Georges inc.* v. *Alcoa Canada ltée*, 2007 QCCS 2691, par. 76-85; *Belmamoun* v. *Brossard (Ville de)*, 2015 QCCS 2913, par. 393-397 (2017 QCCA 102); *Lalande* v. *Compagnie d'arrimage de Québec ltée*, 2014 QCCS 5035, par. 42-45.
134. See: *Archambault* v. *Construction Bérou inc.*, [1992] R.J.Q. 2516 (S.C.); *Voisins du train de banlieue de Blainville Inc.* v. *Agence métropolitaine de transport*, 2004 CanLII 9803 (QCSC), par. 86; *Dorion* v. *Cie des chemins de fer nationaux du Canada*, 2005 CanLII 6007 (QCSC), par. 163- 164.
135. *Citoyens pour une qualité de vie / Citizens for a Quality of Life* v. *Aéroports de Montréal* ["*Citoyens pour une qualité de vie*"], 2007 QCCA 1274, par. 51-53 (dissenting reasons of Justice Otis); *Carrier* v. *Québec*, 2011 QCCA 1231, par. 70.

these comments were made in cases where the injunctive relief was intimately connected with the claim in damages.[136] While, in theory, adding a request for an injunction to a collective claim in damages could be reconciled with the objectives of class actions, as an extra means to control ongoing neighbourhood inconveniences without duplicating proceedings, the justification for a stand-alone injunction is subject to debate.

In a different context bearing similarities to this topic, the Supreme Court concluded in *Marcotte* v. *Longueuil (Ville de)*[137] that a class action is incompatible with a request to quash a municipal by-law, as an individual action could achieve the same objective, also referring to the principle of proportionality. Although recent authorities[138] appear in favour of collective injunction, the argument may not yet be over.

In any event, to obtain the certification of conclusions in injunction, plaintiffs must demonstrate recurring inconveniences. A single isolated event without allegation of ongoing or repeated neighbourhood annoyances will be insufficient to justify such conclusions.[139]

(b) Nature of evidence presented on the merits

As of August 1st, 2017, there have been eight files[140] in which judgments citing article 976 C.C.Q. were rendered on the merits

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136. *Citoyens pour une qualité de vie*, *ibid*, par. 94 (reasons of Justice Pelletier, with Justice Hilton concurring). There was also a nexus between the claims in injunction and damages in the class action certified in *Nadon* v. *Anjou (Ville d')*, [1994] R.J.Q. 1823 (C.A.), p. 1828-1829; 2007 QCCS 150, par. 177. See also: *Clark* v. *4107781 Canada inc.*, 2006 QCCS 5156, par. 63-69.
137. [2009] 3 S.C.R. 65.
138. *DuProprio inc.* v. *Fédération des chambres immobilières du Québec (FCIQ)*, 2016 QCCA 1880, par. 31 (reasons of Justice Chamberland); *Fédération des chambres immobilières du Québec* v. *DuProprio inc.*, 2016 QCCS 1633, par. 63-76. See also: V. De L'Étoile and C. Châtelain, "L'injonction collective: le recours collectif et l'injonction, un mariage heureux ?", (2011) 70 *R. du B.* 63.
139. *Lalande* v. *Compagnie d'arrimage de Québec ltée*, 2014 QCCS 5035, par. 32-37. *Contra*, in cases where recurring inconveniences were alleged: *Carrier* v. *Québec (P.G.)*, 2011 QCCA 1231, *Coalition contre le bruit* v. *Shawinigan (Ville de)*, 2012 QCCS 4142, and *Gaudet* v. *P & B Entreprises ltée*, 2011 QCCS 5867.
140. *Girard* v. *2944-7828 Québec inc.*, 2003 CanLII 1067 (QCCS) (2004 CanLII 47874 and 2004 CanLII 47875 (QCCA)); *Coalition pour la protection de l'environnement du parc linéaire « Petit train du Nord »* v. *Laurentides*, 2004 CanLII 45407 (QCCS); *Comité d'environnement de Ville-Émard* v. *Domfer poudres métalliques ltée*, 2002 CanLII 627 (QCCS) (2006 QCCA 1394); *Ciment du Saint-Laurent*,

in class action matters, including the decision in *Ciment du Saint-Laurent*. From these, two files[141] have been decided on the merits subsequent to the Supreme Court of Canada's decision in *Ciment du Saint-Laurent*.

In the class action context, the Court of Appeal cautioned about the necessity of providing robust evidence to sustain a claim under article 976 C.C.Q. on the merits. In *Carrier* v. *Québec (P.G.)*, it stated that proof of abnormal inconveniences will "in many cases require one or more expert opinions to show the significance of the nuisance in a sufficiently eloquent way to convince the trial judge."[142] The Superior Court also voiced the same kind of warning regarding the need for experts to assess neighbourhood annoyances.[143] Considering the scope and complexity of issues raised by class actions pertaining to article 976 C.C.Q., it is reasonable to consider that experts will often be required to analyse a given activity and its impact.

As pointed out above,[144] since the decision of the Supreme Court in *Ciment du Saint-Laurent*, two decisions were rendered on the merits by the Superior Court citing article 976 C.C.Q. as a source of liability in class action matters: *Spieser* and *Association des résidents riverains de La Lièvre*. In the former case, the action for neighbourhood annoyances was partly granted, whereas it was rejected in the latter case.

The decision of the Superior Court in *Spieser* (on appeal) is one of the most relevant illustration of evidentiary considerations associated with a class action based on article 976 C.C.Q.

In *Spieser*, the representative plaintiff sued the Government of Canada and a munition manufacturer due to their activities on

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supra note 1; *Spieser* v. *Canada (P.G.)*, 2012 QCCS 2801 (on appeal); *Nadon* v. *Montréal (Ville de)*, 2007 QCCS 150 (2008 QCCA 2221); *Ouimette* v. *Canada (P.G.)*, 2000 CanLII 18058 (QCCS) (2002 CanLII 30452 (QCCA)); *Association des résidents riverains de La Lièvre inc.* v. *Québec (P.G.)*, 2015 QCCS 5100.

141. *Spieser* v. *Canada (P.G.)*, 2012 QCCS 2801 (on appeal) ["*Spieser*"]; *Association des résidents riverains de La Lièvre inc.* v. *Québec (P.G.)*, 2015 QCCS 5100.

142. 2011 QCCA 1231, par. 50 (our translation).

143. For a recent example, see *Labranche* v. *Énergie éolienne des Moulins, s.e.c.*, 2016 QCCS 1479, par. 137-138 (2016 QCCA 1879).

144. *Supra* note 141.

a military base between 1938 and 1991, alleging that they spilled trichloroethylene (TCE) which contaminated water supplied to the residents of the Municipality of Shannon. It was alleged that this contamination was the cause of an abnormally high number of cancer and other health problems for the class members. While the claim was essentially one of general civil liability, it was also alleged neighbourhood annoyances per article 976 C.C.Q.

In this case, remedies were sought in the form of compensatory damages, injunction and punitive damages. The litigation unfolded over 115 days of trial, during which 74 witnesses (of which 23 experts) were heard in the fields of hydrogeology, toxicology, epidemiology and oncology.

The trial judge dismissed the claim in civil liability, being of the view that evidence did not show on a balance of probabilities that the spilling of TCE which contaminated ground water was the cause of the elevated number of cancers and diseases among the residents of Shannon.[145]

However, the Superior Court held in *Spieser* that the defendants were subject to the strict liability regime of article 976 C.C.Q. and that the contamination of water amounted to a nuisance for some class members. The abnormal neighbourhood disturbances were based on the fact that, when the problem of well contamination became known, some residents living in a perimeter of the city called "the red triangle" were deprived of drinking water for a period of one year before their residences were connected to the municipal water supply.[146]

When assessing damages in class actions, it is recognized that each class member does not need to testify to establish the injury actually sustained. In *Ciment du Saint-Laurent*, the Supreme Court stated that "the court can draw from the evidence a presumption of fact that the members of the group have suffered a similar injury" to that of the plaintiff.[147] In Quebec, these presumptions must be serious, precise and concordant, pursuant to article 2849 C.C.Q.

What must be proven is an element of damage common to everyone, and while the injury of the class members may vary in

145. *Spieser*, *supra* note 141, par. 699.
146. *Ibid*, par. 712-715 and 726-728.
147. *Supra* note 1, par. 108.

intensity, courts can infer that each member has sustained injury based on similarities between the claimants' characteristics.[148]

Accordingly, courts can divide the class into subgroups, each of them made up of members who have suffered a similar injury.[149] It is what was done in *Spieser*, where 17 residents had testified,[150] and where the trial judge granted up to $15,000 in indemnity for all class members who suffered inconveniences for being deprived of drinking water, according to the length of their residence in the perimeter.[151]

However, in *Spieser*, the injunction sought to force the decontamination of ground water was dismissed, in light of the ongoing efforts made to determine the sources of contamination and to find a solution to this problem.[152] The claim for punitive damages was also dismissed, because there was no evidence of an intentional wrongdoing.[153]

By contrast, in *Association des résidents riverains de La Lièvre*,[154] the Superior Court rejected on all grounds the class action in which neighbourhood annoyances were claimed. In this matter, a group of citizens living on the shores of a river complained about the mismanagement of a dam facility. The claim in damages and injunction was based on general civil liability, but also on article 976 C.C.Q. The residents alleged that by maintaining water levels too high for long periods of time, bank erosion was accelerated to an abnormal degree, and that the dam was causing neighbourhood annoyances. The defendant contested, arguing that it adequately managed the dam, and was protected by legislative immunity.

In this case, the trial lasted 17 days and the judge also visited the dam. Ten witnesses were heard, including four experts in land surveying and water engineering.

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148. *Bou Malhab* v. *Diffusion Métromédia CMW inc.*, [2011] 1 S.C.R. 214, par. 54 ["*Bou Malhab*"].
149. *Ciment du Saint-Laurent*, *supra* note 1, par. 108.
150. *Spieser*, *supra* note 141, par. 132-138.
151. *Ibid*, par. 730-735.
152. *Ibid*, par. 737.
153. *Ibid*, par. 710.
154. *Supra* note 141.

The Superior Court dismissed the action, being of the view that there was no fault in the operation of the dam, pointing out that the defendant enjoyed an immunity pursuant to the legislation applicable to the dam and did not display any abuse in its management.[155] The Court, referring to the analytical framework used by the Court of Appeal in *Plantons*, also concluded that inconveniences suffered by the residents were not excessive and that the natural phenomenon of shore erosion did not alter the banks in a significant way, dismissing the claim based on article 976 C.C.Q.[156]

In line with the decision rendered in *Spieser*, the judgment in *Association des résidents riverains de La Lièvre* confirms the necessity to provide compelling evidence, for a class action to succeed pursuant to article 976 C.C.Q. The latter judgment also illustrates that inconveniences connected to a natural phenomenon are less susceptible to lead to compensation,[157] as opposed to neighbourhood annoyances which are closely associated with human activities, a trend that has also been observed in civil cases.

As a matter of fact, whenever compensatory damages were granted in the context of a class action pursuant to article 976 C.C.Q., the courts have allocated awards in dividing the class into subgroups.[158]

Given the judicial discretion and the difficulty in assessing environmental annoyances, the Supreme Court recognized that the use of average amounts to indemnify class members may be reasonable and appropriate in certain circumstances.[159] However, the defendant can show that this approach would inappropriately increase its liability as a result. For instance, courts could consi-

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155. *Ibid*, par. 724.
156. *Ibid*, par. 767-768.
157. One class action based on article 976 C.C.Q. which was not certified since *Ciment du Saint-Laurent* is also about a natural phenomenon (flooding): *Dupuis* v. *Canada (P.G.)*, 2014 QCCS 3997.
158. For instance, in addition to *Spieser*, *supra* note 141, see *Barrette* v. *Ciment du Saint-Laurent inc.*, 2003 CanLII 36856 (QCCS) (confirmed by the Supreme Court, par. 116), *Girard* v. *2944-7828 Québec inc.*, 2003 CanLII 1067 (QCCS) (2004 CanLII 47874 and 2004 CanLII 47875 (QCCA)), as well as *Comité d'environnement de Ville-Émard* v. *Domfer poudres métalliques ltée*, 2002 CanLII 627 (QCCS) (2006 QCCA 1394).
159. *Ciment du Saint-Laurent*, *supra* note 1, par. 114-116; *Bou Malhab*, *supra* note 148, par. 54.

der individual recovery if evidence does not allow a sufficiently precise estimation of the total claim,[160] or if some members did not suffer any damage.

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Since the decision of the Supreme Court of Canada in *Ciment du Saint-Laurent*, class action is a procedural vehicle which is increasingly used in environmental law matters and claims in nuisance. The liberal approach to the certification of class actions in Quebec favours the exercise of claims pursuant to article 976 C.C.Q., yet certification remains an important step to dismiss abusive demands. Accordingly, the courts will be using caution before certifying claims notably for some type of remedies – e.g. injunction, punitive damages – without sufficient allegations and some evidence in this regard.

So far, the few judgments rendered on the merits in class actions about neighbourhood disturbances illustrate that courts require robust evidence, including expert opinions, before granting such claims.

CONCLUSION

Over the last decade, article 976 C.C.Q. has become a source of liability often cited in environmental law cases. The decision of the Supreme Court in *Ciment du Saint-Laurent* contributed to this evolution, by confirming a strict liability regime for neighbourhood disturbances, as in the common law of nuisance. Yet that decision did not specify the evidentiary requirements for neighbourhood annoyances claims. While this article attempts to offer some guidance in this regard, specific situations will continue to generate debate, given the variety of circumstances associated with those claims. The challenge for the courts will remain to determine whether the inconveniences are abnormal or excessive, in view of the duty of tolerance amongst neighbours, and to strike an appropriate balance between the interests at stake.

160. Article 595 C.C.P., *a contrario*.