

Opinion sur le Ray-Mont Logistiques - Secteur Assomption Sud

John Cairns (riverain) - 31/10/2024

Soft dB is an acoustical analysis company which carried out an assessment of the impact of noise generated by Raymont Logistics on the neighbouring districts.

On searching the term « Soft dB » in the Société Québécoise d'Information Juridique's archive, we are provided with 38 results. The cases from around the time of the company's foundation in 1996 seem mostly to concern workplace claims regarding hearing loss, and Soft dB does a great job of proving that workers were in the wrong and had not been exposed to excessive noise levels by their employers (see Jean-Paul Couturier c. Transport TFI 4 392606-03B-0910 & Daniel Dumas c. Meubles Ideal 368688-03B-0901/374556-03B-0904 24/01/2011). In the knowledge of Raymont Logistics' own legal woes regarding its employees' insurance claims (see Supreme Court ruling), the ground was already fertile for a partnership between these two companies.

From around 2020, we see a shift in Soft dB's clientele as they start to attract business from industries which are having social acceptability issues (windfarm & highway).

The tribunals Soft dB are involved in generally go **one of three ways** :

On several occasions, the courts have **questioned the quality and accuracy of Soft dB's findings** and asked that they be stricken from the record.

In the case of 9185-4000 Quebec Inc. & Assaly c. Centre commercial Innovation from July 2014, the acoustic study was so poorly conducted by Michel Pearson of Soft dB that the judge commented, « [64] L'absence de monsieur Pearson lors de la prise des mesures sonores à Innovation et l'absence totale de visite de sa part dans l'entrepôt de Métro pour identifier les sources potentielles de bruit, constituent des faiblesses importantes de son rapport. Dans ces circonstances, le Tribunal ne peut le retenir. »

In June 2017, another judge ruled that Soft dB's (as well as another company, Vinacoustik's) analyses in the case of Pelletier c. Metro 19/06/2017 '[le] Tribunal prend acte de ces deux études avec beaucoup de circonspection. Trop de distinctions doivent être constatées.' He goes on to enumerate a multitude of variables which were not taken into account by either sound analysis firm but which had a direct bearing on the case.

Louis Belanger c. 2637-5808 Quebec Inc. provides another example from as recently as 2023 in which a fundamental error in the methodology of the Soft dB employee was signalled by the judge. In this case, the technician did not verify whether the windows of the edifice from which the sound he was measuring was emanating from were open or not : « [86]Soulignons finalement que l'expert Demers n'a pas été en mesure de confirmer si les volets et les portes de la Grange étaient fermés lors de la prise des mesures du 21 août 2022. »

In each case, the standard and viability of sound analyses provided by Soft dB were legitimately questioned by authoritative parties and the evidence consequently thrown out or taken with a grain of salt on grounds that it was not representative of the actual situation on the ground.

When Soft dB was involved in the case opposing Christian Noël & Jean-Luc Provost against Energie Eolienne des Moulins S.E.C. in 2023, it emerged that the acoustics company can provide quite a panoply of assessments. In this case, 3 options were tabled, 'un premier scénario à 67,000 \$ qui comprend 9 stations de bruit et 4 stations de vibration; un deuxième scénario à 221,420 \$; Me Barrault précise qu'il est possible d'obtenir un troisième scénario sur mesure, en fonction du budget des parties.'

Would the errors which resulted in Soft dBs' analyses being rejected by certain courts (as mentioned above) be due to the fact that the company was providing one of its less costly rates to these clients and therefore was being less thorough? Would it be possible to know which package M. Raymond opted for and whether we can feel fully confident that important factors were not overlooked during the acoustic assessment of Raymont Logistques's impact on his neighbours? Why was no receptor put at the Biscuiterie condos when they will suffer heavily from the daily arrival of trains?

It was suggested at the OCPM meeting in October that the **measures taken by Soft dB occurred at less active periods of Raymont Logistique's working day**, and while there does not seem to be any reason to suspect that RML, as contractors of Soft dB for the purposes of this acoustic analysis requested by the minister, would coerce their (contractee) to produce a favourable outcome by directing the acousticians towards quieter periods and areas, the sound analysis company has been involved in a similar situation in the past.

In the case of Belmamoun & L'Heureux c. Ville de Brossard (10/10/23), in which residents were driving for noise reduction from a highway, surprise was expressed in court « [214]... que les tests aient été effectués un dimanche. Il vaut mieux, selon lui, prendre les mesures à un moment plus critique, plus représentatif. » While the measurements already taken may be legally admissible, they can in no way be considered representative of what those surrounding the site will be subjected to when it is fully operational. The modeling of the railway noise in particular is highly theoretical and until this has been more accurately and thoroughly taken into account, the sound analysis ought to be considered incomplete. Further, in the Christian Noël & Jean-Luc Provost against Energie Eolienne des Moulins S.E.C. case, Soft dB was appointed by the court as an 'expert commun,' with both parties sharing the costs of the analysis and both having recourse to their own experts in order to analyse the data collected. Why, in the case of Raymont Logistics, is the company carrying out the only survey demanded by the minister not impartial, but in the pay of one of the main interested parties?

To conclude on this note, the Moulins case also included some **questioning of Soft dB's impartiality**.

235-06-000001-148 01/09/2020

[43] À l'audience, dans ses arguments, le procureur des demandeurs ajoute : « Pour moi, Soft n'aurait jamais dû être désignée »[25].

[44] Dans leur plan d'argumentation, les demandeurs écrivent ceci par le biais de leur procureur[26] :

23- Les représentants sont supportés par tous les membres du groupe.

24- Une pétition ayant recueilli 3500 signatures a été déposée à l'Assemblée nationale.

25- Les membres du groupe sont informés des décisions des représentants qui se sont opposés par tous les moyens possibles à la désignation définitive de Soft DB comme expert commun près le Tribunal.

26- Les représentants estiment que le maintien de cette mission risque de compromettre le présent dossier, en raison, à l'évidence, de l'impossibilité de considérer Soft DB comme étant capable de noter des données indépendantes.

27- D'ailleurs SOFT DB n'a aucun intérêt de mesurer la totalité des infrasons émis par les éoliennes, par exemple, puisqu'il travaille pour cette industrie. Par ailleurs, il n'est pas certain que SOFT DB soit en mesure de livrer des mesures incontestables au large éventail, aussi bien pour des raisons techniques que par opportunité.

In this case, the judge simply ruled that the analysis was objective and reminded Soft dB of their solemn obligation to 'enlighten' the court. As was mentioned in the intro, there has been a change in the kind of clients the acoustics company has worked with since its lowly days of taking down CNSST claimants. Involvement in the Moulins case in 2020 signalled a definite shift in strategy, with a move away from workplace claims and towards the presumably more lucrative contracts associated with larger scale social projects like windfarms, highways and container yards. Only a week ago, director of Soft dB Pierre-Claude Ostiguy was interviewed in CIM magazine, vaunting the company's ability to render mining projects socially acceptable (<https://magazine.cim.org/en/voices/noise-control-en/>) and their methodology and patented equipment certainly seem to be making Soft dB the go-to guys when an industry has a social acceptability issue.

I believe there is enough evidence here to bring the Soft dB acoustical analysis, a reminder the ONLY assessment demanded by minister Charette, into disrepute. If it's the only survey that is to be done, then it should be done competently, accurately and impartially.

- John Cairns