

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

(Recours Collectif)
COUR SUPÉRIEURE

NO : 500-06-000336-061

T.Y. resident of the City of Montreal, herein electing domicile for purposes of these proceedings c/o the Prothonotary 1, Notre-Dame East, Montreal, Quebec, H2Y 1B6

-and-

M.Y., mother of T.Y. resident, of the City of Montreal, herein electing domicile for purposes of these proceedings c/o the Prothonotary 1, Notre-Dame East, Montreal, Quebec, H2Y 1B6

Petitioners

-vs-

L'ASSOCIATION SELWYN HOUSE, legal entity, carrying on business as "Selwyn House School", at 95, Chemin Cote St. Antoine, in the District of Westmount, Province of Quebec, H3Y 2H8

Respondent

**PETITION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVES
(Articles 1002 etc. C.c.p.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONERS
RESPECTFULLY SUBMIT THE FOLLOWING:

BACKGROUND AND LEGAL CLAIMS

- 1) Petitioner T.Y. ("the student representative Petitioner") on his own behalf and on behalf of all student class members ("the student class members"), hereby seeks authorization of the Superior Court to file the following claims against Respondent:
 - a) compensation and damages for breach of trust, breach of fiduciary duties, negligence, assault and damages for wilful and wanton and vexatious intentional perpetration of mental distress resulting from the conduct of the employee of the Respondent, James P. Hill, mental, emotional and sexual abuse of the student representative Petitioner and student class members in the sum of \$13 million dollars;
 - b) Compensation for breach of trust, negligence for hiring, employing and inadequately supervising its personnel, including Hill and in employing Hill, and, more generally, in failing to protect the interests of the student Petitioner and other student class members and for the intentional, or, in the alternative, negligent infliction of mental distress occasioned as a result of Selwyn House School's failure to assist and protect the student Petitioner and student class members for the abuse perpetrated upon them by Hill in the amount of \$13 million dollars;
 - b) Damages for liability in hiring, employing and inadequately supervising Hill and failing to protect the interests of the Petitioner and student class members in the amount of \$13 million dollars;
 - c) Damages for Respondent's breach of duty of care in the amount of \$13 million dollars;
 - d) Punitive and exemplary damages in the sum of \$ 4 million dollars;
 - e) Aggravated damages in the sum of \$ 2 million dollars;
 - f) Special damages in a sum to be determined at the eventual trial after authorization;
 - g) Interest and the additional indemnity in virtue of the Quebec Civil Code;
- 2) The Petitioner, M.Y., on behalf of herself and on behalf of other class members claims as follows:

- a). Damages pursuant to loss of care, guidance and companionship and pecuniary loss;
 - b). Interest and the additional indemnity in virtue of the Quebec Code Civile;
 - c). Legal fees and legal costs to be assessed at trial;
 - d). Such further and other relief as this Honourable Court may deem just and reasonable in the circumstances
- 3) Petitioner T.Y. currently resides in the City of Montreal, in the Province of Quebec, and was a student at Selwyn House School;
 - 4) Petitioner M.Y. resides in the City of Montreal and is the mother of Plaintiff T.Y.;
 - 5) That Respondent, L'Association Selwyn House, carrying on business as "Selwyn House School" ("SHS"), is a corporation incorporated according to laws of the Province of Quebec;
 - 6) SHS is an independent college preparatory school for boys in Kindergarten through grade 11 in the City of Montreal, Province of Quebec;
 - 7) That during all pertinent periods, James P. Hill ("Hill") was employed by Respondent as a teacher, employee, servant and agent of Respondent;
 - 8) That Respondent was founded in 1909 and claims to provide its students with an "education of exceptional depth and scope";
 - 9) The "Student Class Members" (represented by T.Y.) are all persons who were sexually abused by Hill while students at SHS;
 - 10) The "Family Class Members" (represented by M.Y.), namely persons closely related to the Student Class Members, are entitled to recover damages for injuries occasioned by the fault and negligence of Respondent;
 - 11) Hill, at all pertinent times, used and exploited his position of authority and supervisory capacity to cultivate an inappropriate and harmful relationship with T.Y. in order to manipulate and lure T.Y. and other student class members for the sole purpose of furthering his relationship with T.Y. and other Student Class Members, so as to perpetuate acts of sexual abuse on them;
 - 12) Hill was a teacher at SHS from 1961 to 1972. Hill was T.Y.'s teacher for several of those years. In 1970, Hill was T.Y.'s Spanish teacher;
 - 13) Petitioner T.Y. attended SHS as a student for grades 3 through 11, from September 1961 to June 1970. Starting in or about 1964, when T.Y. was 10 or 11 years old,

through to in or about 1967, Hill assaulted T.Y. by fondling T.Y.'s breast while T.Y. attended classes taught by Hill. Hill similarly committed those acts on other Student Class Members;

- 14) In March 1970, Hill advised T.Y. he would like T.Y.'s assistance with certain "research" Hill was supposedly conducting. Toward that end, on March 13, 1970, being T.Y.'s 17th's birthday, Hill gave T.Y. a piece of hashish. Hill told T.Y. to smoke the hashish late that night and to attend Hill's apartment early the next day. T.Y. did as he was instructed by Hill. On arriving at Hill's apartment, Hill asked T.Y. if T.Y. had smoked the hashish as Hill had instructed. T.Y. confirmed that he had. Apparently satisfied with this response, Hill indicated he wanted to continue with the "research". Hill instructed T.Y. to remove all his clothes, which T.Y. did. Hill then told T.Y. to perform certain physical exercises. While T.Y. performed those exercises, Hill fondled T.Y.'s testicles and proceeded to ask T.Y. personal questions about the functioning of T.Y.'s sex organs. After several minutes, T.Y. refused to cooperate any further with Hill and left Hill's apartment. Hill similarly committed those acts on other Student Class Members;
- 15) T.Y. specifically states that Hill seized upon his and other Student Class Members' vulnerability, which included their small stature, inexperience and young age and his position of dominance as a teacher, administrator and head master of the Middle House, and employee of SHS, with authority to dispense favours, benefits and inducements, thereby creating an environment in which sexual assault and abuse of T.Y. and other Student Class Members prevailed on a regular basis. The time during which this abuse was occurring was one of fright, shock, confusion, shame and frustration. T.Y. feared that others would discover the abuse. T.Y. states that he was unable to disclose the abuse at an earlier time, given his fear, embarrassment and denial. He also felt alone, awkward and confined to secrecy, given the situation. At the time the abuse was occurring, T.Y. feared punishment from his parents and ridicule and embarrassment from his friends and peers and, as such, he attempted to hide same from persons around him. It was very painful for him to think about, let alone speak of the abuse.
- 16) T.Y. maintains that Hill's conduct and actions in these circumstances has caused him to develop certain psychological mechanisms in order to survive the trauma of the sexual abuse, including denial, repercussion, disassociation and guilt. T.Y. has repressed some, but not all, of the memories of the sexual abuse and the emotions associated with it. Even to this day, he partly blames himself for the occurrence of the sexual abuse;
- 17) As a direct consequence of the abuse, T.Y. did not initially undergo any therapy or other psychiatric treatment. He still does not understand/appreciate the full extent

of the damage caused to him by the sexual assaults committed by Hill and the damages caused by same;

- 18) As a direct result of the relationship that developed between Petitioner T.Y. and other Student Class Members, on the one hand, and Hill on the other hand, they became dependent upon Hill and vulnerable to Hill to such an emotional extent that Hill owed T.Y. and other Student Class Members, a special duty of care and fiduciary duties as follows:
- a) Not to be sexually abusive;
 - b) Not to use the relationship to satisfy his own sexual desires;
 - c) Respect and dignity and privacy of their person;
 - d) Such further and other duties as may be advised to the Court at or prior to trial;
- 19) That Petitioner T.Y. and other Student Class Members maintain that Hill's aforesaid actions constitute a breach of trust, negligence and assault upon their person. The conduct of Hill was intentional, malicious and was done with the knowledge that it would cause them to suffer humiliation, indignity, physical, emotional and mental distress and injury and general damages to their person;
- 20) Further, Hill's conduct was done with the knowledge that T.Y.'s and all other Student Class Members' emotional and physical anguish would increase, and was done in wanton, careless and wilful disregard to the consequences to them. Hill's conduct was harsh, vindictive, malicious and reprehensible. Such conduct is offensive to, and in violation of the ordinary standards of decent conduct in the community which ought to be deterred, and is deserving of full condemnation, punishment and compensation;
- 21) Petitioners claim and plead that SHS is responsible for the acts and conducts of its employees, in this case Hill, and SHS is negligent in that:
- a) Hill was an employee, servant or agent of SHS, and by placing him in a position of trust and authority, SHS facilitated Hill's capacity to do wrong, and without that position and authority, that wrong could have been prevented against Petitioner T.Y. and all Student Class Members;
 - b) Hill was a teacher at SHS from 1961 to 1972.
 - c) Hill inflicted the abuse during the course of his employment;

- d) Hill's position with SHS was such that SHS could foresee that occupying that position could result in Hill exercising control of the youths in the school, and provide him with the opportunity to commit sexual abuse;
 - e) SHS knew, or ought to have known, of Hill's actions involving T.Y. and other male youths, including Student Class Members. Prior to the attacks upon T.Y., SHS was aware, or should have been aware that Hill and other pedophiles had engaged in illegal and abhorrent sexual practices with male youths at SHS. Hill had exhibited a similar pattern of behaviour, with other male youths, and this pattern was known to, or should have been known by, Hill's superiors and fellow employees at SHS;
 - f) SHS failed to adopt proper or adequate hiring practices to ensure persons such as Hill would not be hired;
 - g) SHS knew, or ought to have known of Hill's relationship with T.Y. and other Student Class Members;
 - h) SHS did not provide proper, adequate or effective training or monitoring, initially, or on an on-going basis, to ensure that Hill was suitable and fit to act as an employee of SHS;
 - i) SHS did not adequately, or at all, monitor the performance and behaviour of Hill to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of SHS would exhibit;
- 22) In addition to the foregoing, Petitioners claim that SHS is liable for the acts and conduct of Hill, and/or negligence by reason of:
- a) Hill's status as an employee of SHS constituted a deemed acceptability and suitability and fitness of Hill for that position upon which T.Y. and each Student Class Member relied, and had every reasons to rely on;
 - b) SHS knew, or ought to have known, that Hill was not suitable or fit to be employed at SHS, given the presence of males of an impressionable age;
 - c) SHS knew, or ought to have known, that Hill was a pedophile or a person with abhorrent sexual tendencies who engaged in illegal and immoral sexual activity with young boys who were under his supervision or otherwise;
 - d) SHS knew, or ought to have known, of Hill's actions and took no steps to have him removed;

- e) SHS failed to provide the leadership and due care by not implementing or enforcing guidelines on sexual abuse, thereby causing to Petitioners and the Class Members damages, inclusive of the continuation and exacerbation of said damages. SHS failed to warn potential victims of sexual abuse, such as T.Y., and that there was a risk that Hill might commit sexual assault and battery;

23) In addition to the foregoing, Petitioners claim liability against SHS on the following basis:

- a) SHS did not provide regular, proper, effective training, teaching guidelines or monitoring of Hill adequately or at all, to ensure that SHS was operating in accordance with, as an institution holding itself out as a Private Boy's School;

- b) SHS failed to respond properly, nor did it take appropriate steps to protect potential victims, such as T.Y. and other Student Class Members, when information was obtained that Hill might be committing sexual assault and battery. Furthermore, when the sexual assaults and battery of other complainants by employees, servants or agents of SHS were discovered, SHS failed to undertake an investigation, or otherwise ensure that there were no victims or perpetrators;

24) Your Petitioner T.Y. states that as a result of the relationship between him and other Student Class Members and Hill, T.Y. and other Student Class Members became dependent upon, and vulnerable to Hill, to the extent that SHS owed T.Y. and other Student Class Members a special duty of care of a fiduciary nature to:

- a) Ensure that its teachers were effectively and adequately monitored and trained;
- b) Ensure that its teachers were not sexually abusing students;
- c) Ensure that the students were adequately protected from those in position of authority;
- d) Not to employ Hill;
- e) Such further and other breaches as may be advised in the future.

25) That your Petitioners state that the action, inaction and omissions of SHS as aforesaid, constitute a breach of trust and negligence, in the hiring, employing and

inadequately supervising Hill and in failing to protect T.Y. and other Student Class Members' interests;

- 26) Petitioners maintain that the conduct of Hill and SHS, in general, is reprehensible and is conduct which should be deterred and the Plaintiff T.Y. and the other Student Class Members are therefore entitled to punitive and exemplary damages;
- 27) Your Petitioners plead that SHS owed a duty to Petitioner, T.Y., and all other Student Class Members to ensure that they were reasonably safe while on the premises, and that SHS breached its duty of care, the particulars of which, have been detailed hereinabove;
- 28) That as a result of the abuse, Petitioner T.Y. and other Student Class Members have encountered difficulty with females sexually. They have become alienated from their family members, and their relationships with them have been adversely affected because of the sexual abuse;
- 29) As a result of Hill's actions as aforesaid, T.Y. and the other Student Class Members have suffered serious and permanent injuries and general and special damages, for which the Defendant is at law, responsible, including, although not limited to, the following:
 - a) On-going severe emotional and psychiatric hospitalization and professional counselling which continues to this day;
 - b) Numerous attempts at suicide;
 - c) Inability to sleep;
 - d) Recurring nightmares;
 - e) Difficulty in developing and maintaining healthy and meaningful interpersonal relationships;
 - f) Inability to trust other individuals;
 - g) Emotional and mental distress;
 - h) Low self-esteem;
 - i) major depression;
 - j) Failed relationships;
 - k) Problems with authority figures, leading to conflicts with employers;

- l) Lack of self-confidence;
 - m) Inability to complete formal education;
 - n) Loss of income;
 - o) Such further and other damages as may be advised in the future;
- 30) That as a result of the assault upon their childhood innocence, physical safety, integrity and mental well-being, the experiences have left T.Y. and each Student Class Member emotionally and mentally scarred and with the inability to properly function as a person, man, husband, parent and son or brother;
- 31) Plaintiff T.Y. and other Student Class Members as a result of above-described acts and omissions, have a general anxiety disorder and have suffered post-traumatic stress disorder;
- 32) As a consequence of these experiences, T.Y. and other Student Class Members have been put to medical expense and will require therapy and medical attention;
- 33) The Petitioner M.Y. states and pleads that, as a result of the conduct set out in the foregoing paragraphs and the corresponding injuries and damages to T.Y., she sustained injuries and damages, in particular, has suffered dramatic loss of care, guidance and companionship from T.Y. and has sustained other damages, including:
- a) Actual expenses reasonably incurred for the benefit of T.Y.;
 - b) Travelling expenses actually incurred in visiting T.Y.;
 - c) The provision of nursing, housekeeping and other services for T.Y.
- 34) Each family Class Members has suffered some or all of these damages in respect of a Student Class Member(s);
- 35) That Petitioners' damages and the damages of other Class Members have been suffered, and continue to be sustained in the Province of Quebec and elsewhere;
- 36) The sexual assault perpetrated by Hill on Student Class Members were committed within the Province of Quebec;

CLASS ACTION

- 37) The Petitioner T.Y. wishes to institute a class action on his own behalf and on behalf of all Student Class Members forming part of the group, comprised as follows:

SUB-GROUP I

- a) "All students at Selwyn House School, who were the victims of the breach of trust, sexual assault and negligence and damaged therefrom as a result of the sexual, emotional and mental abuse perpetrated by Respondent's employee James P. Hill to Petitioner T.Y. and other Student Class Members";

Petitioner M.Y. respectfully wishes to institute a class action on behalf of all persons forming part of the following group:

SUB-GROUP II

- b) "Wives, including, common law wives, parents and children of the individual victims described in the above group, who were damaged by the actions noted in paragraph 37a";

- 38) The personal claims of Petitioners against the Respondent are based on the following facts:

- 38.1 Plaintiff T.Y. currently resides in the City of Montreal, Province of Quebec and was a student of Respondent Selwyn House School;
- 38.2 The Petitioner M.Y. resides in the City of Montreal, Province of Quebec, and is the wife of Petitioner T.Y.;
- 38.3 Respondent L'Association Selwyn House, carrying on business as "Selwyn House School ("SHS"), is a corporation incorporated pursuant to the laws of Quebec;
- 38.4 SHS is an independent College preparatory school for boys in Kindergarten through grade 11, located in Montreal, Quebec;
- 38.5 At all material times, James P. Hill, ("Hill") was a teacher, employee, servant or agent of Respondent;
- 38.6 Respondent was founded in 1909, and claims to provide its students with an "education of exceptional depth and scope."
- 38.7 The Student Class Members are all persons who were sexually abused by Hill while students at SHS;

- 38.9 Hill used his position of authority and supervisory capacity in order to cultivate an inappropriate relationship with T.Y. in order to manipulate and lure T.Y. and the other Student Class Members for the sole purpose of furthering his relationship with T.Y. and the other Student Class Members, so as to perpetuate acts of sexual abuse on them;
- 38.9 Petitioner T.Y. attended SHS as a student for grades 3 through 11, from September 1961 to June 1970. Starting in or about 1964, when T.Y. was 10 or 11 old, through to in or about 1967, Hill assaulted T.Y. by fondling T.Y.'s breast while T.Y. attended classes taught by Hill. Hill also committed battery and sexual assault on T.Y. in March 1970. Hill similarly committed those acts on other Student Class Members.
- 38.10 Petitioner T.Y. maintains that Hill seized upon his and other Student Class Members' vulnerability, which included their small stature, inexperience and young age, and Hill's position of dominance as a teacher and employee of SHS, with authority to dispense favours, benefits and inducements, thereby creating an environment in which to sexually assault and abuse T.Y. and the other Student Class Members;
- 38.11 The time during which this abuse was occurring, was a time when T.Y. felt scared, shocked, confused, disoriented, frustrated and ashamed. He was afraid that others would find out about the abuse. T.Y. states that he was unable to disclose the abuse at an earlier time, given his fear, embarrassment and denial, which was part of his medical problem arising from the wrong-doing of Hill. He also felt alone, awkward and confined to secrecy, given the situation. At the time the abuse was occurring, T.Y. feared punishment from his parents and ridicule and embarrassment of his friends and peers and, as such, he attempted to hide same from persons around him. It was very painful for him to think about, let alone speak about the abuse. T.Y. pleads that Hill's conduct and actions in these circumstances, have caused him to develop certain psychological mechanisms in order to survive the trauma of the sexual abuse, including denial, repression, disassociation and guilt. T.Y. has repressed some, but not all of the memories of the sexual abuse and the emotions associated with it. Even to this day, he partly blames himself for the occurrence of the sexual abuse. It was impossible for T.Y. to act sooner given his medical condition and traumatic impact of the events that happened to him.
- 38.12 As a direct consequence of the abuse, T.Y. did not initially undergo any therapy or any other psychiatric treatment. He still does not understand/appreciate the full extent of the damages caused to him by the sexual assaults committed by Hill and the damages caused by same;

38.13 As a result of the relationship that developed between the Petitioner T.Y. and the other Student Class Members, on the one hand, and Hill on the other hand, they became dependent upon Hill and vulnerable to Hill to such an emotional extent, that Hill owed T.Y. and other Student Class Members a special duty of care and fiduciary duties as follows:

- a) Not to be sexually abusive;
- b) Not to use the relationship to satisfy his own sexual desires;
- c) Respect and dignity and privacy of their person;

38.14 Petitioner T.Y. and other Student Class Members state that Hill's aforesaid actions constitute a breach of trust, negligence and assault upon their person. Hill's conduct was intentional, malicious and was done with the knowledge that it would cause them to suffer humiliation, indignity, physical, emotional and mental distress and injury. Further, Hill's conduct was done with the knowledge that T.Y.'s and other Student Class Members' emotional and physical anguish would increase, and was done with wonton, careless and wilful disregard to the consequences to them. Hill's conduct was harsh, vindictive, malicious and reprehensible. Such conduct is offensive to the ordinary standards of decent conduct in the community which ought to be deterred, and is deserving of full condemnation and punishment;

38.15 Petitioners claim that SHS is responsible for the acts and conducts of its employees, in this case Hill, and SHS is negligent in that:

- a) Hill was an employee, servant or agent of SHS, and by placing him in a position of trust and authority, SHS facilitated Hill's capacity to do wrong, and without that position and authority, that wrong could have been prevented against Petitioner T.Y. and all Student Class Members;
- b) Hill inflicted the abuse during the course of his employment;
- c) Hill's position with SHS was such that SHS could foresee that occupying that position could result in Hill exercising control over youths in the school, and provide him the opportunity to commit sexual abuse;
- d) SHS knew, or ought to have known, of Hill's actions involving T.Y. and other male youths, including Student Class Members. Prior to the attacks upon T.Y., SHS was aware, or should have been aware that Hill and other pedophiles had engaged in illegal and abhorrent sexual practices with male youths at SHS. Hill had exhibited a similar pattern of behaviour, with other

male youths, and this pattern was known to, or should have been known by, Hill's superiors and fellow employees at SHS;

- e) SHS failed to adopt proper or adequate hiring practices to ensure persons such as Hill would not be hired;
- f) SHS knew, or ought to have known of Hill's relationship with T.Y. and other Student Class Member;
- g) SHS did not provide proper, adequate or effective training or monitoring, initially, or on an on-going basis, to ensure that Hill was suitable and fit to act as an employee of SHS;
- h) SHS did not adequately, or at all, monitor the performance and behaviour of Hill to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of SHS would exhibit;

38.17 In addition to the foregoing, Petitioners claim that SHS is liable for the acts and conduct of Hill, and/or negligent by reasons of:

- a) Hill's status as an employee of SHS constituted a reconfirmation and public acknowledgement of suitability and fitness of Hill for that position, upon which T.Y. and each Student Class Member relied;
- b) SHS knew, or ought to have known, that Hill was not suitable or fit to be employed at SHS, given the presence of males of an impressionable age;
- c) SHS knew, or ought to have known, that Hill was a pedophile or a person with abhorrent sexual tendencies, who engaged in illegal and immoral sexual activity with young boys who were under his supervision or otherwise;
- d) SHS knew, or ought to have known, of Hill's above-noted actions and took no steps to have him removed;
- e) SHS failed to provide the leadership by not implementing, or not enforcing guidelines on sexual abuse, thereby causing Petitioners and the Class Members damages to begin, to continue and to become exacerbated as time goes on;
- f) SHS failed to warn potential victims of sexual abuse, such as T.Y., that there was a risk that Hill might commit sexual assault and battery;

38.18 That in addition to the foregoing, Petitioners claim liability as against SHS for the following reasons:

- a) SHS did not provide regular, proper, effective training, teaching guidelines or monitoring of Hill adequately or not at all, to ensure that SHS was operating in accordance with, and as an institution holding itself out as a Private Boy's School;
- b) SHS failed to respond properly, nor did it take appropriate steps to protect potential victims, such as T.Y. and other Student Class Members, particularly when information was obtained that Hill might be committing sexual assault and battery. Furthermore, when the sexual assaults and battery of other complainants by employees, servants or agents of SHS was discovered, SHS failed to undertake an investigation, or otherwise ensure that there were no victims or perpetrators;

38.19 Petitioner T.Y. states that as a result of the relationship between him and the other Student Class Members and Hill, Petitioner, T.Y. and other Student Class Members became dependent upon, and vulnerable to Hill, to the extent that SHS owed the Petitioner, T.Y. and other Student Class Members a duty of care of a fiduciary nature to:

- a) Ensure that its teachers were effectively and adequately monitored and trained;
- b) Ensure that its teachers were not sexually abusing students;
- c) Ensure that the students were adequately protected from those in positions of authority;
- d) Not to employ Hill;

38.20 Petitioners maintain that the action or inaction of SHS as aforesaid, constitutes a breach of trust and negligence, in the hiring, employing and inadequately supervising Hill and in the failing to protect the Petitioner T.Y. and other Student Class Members' interests;

38.21 Petitioners maintain that the conduct of Hill and SHS, in general, is reprehensible and is conduct which should be deterred by Plaintiff T.Y. and the other Student Class Members are therefore entitled to punitive and exemplary damages;

38.22 Petitioners maintain that SHS owed a duty to Petitioner, T.Y., and all other Student Class Members to ensure they were reasonably safe while on the premises, and that SHS breached its duty of care, and the particulars of the breach and the damages that resulted are particularized hereinabove;

38.23 That as a result of the abuse, Petitioner T.Y. and other Student Class Members have encountered difficulty with females sexually. They have become alienated from their family members, and their relationships with them have been adversely affected because of the sexual abuse;

38.24 As a further result of Hill's actions as aforesaid, T.Y. and the other Student Class Members have suffered serious and permanent injuries and general and special damages, for which Respondent is at law, responsible, including:

- a) On-going severe emotional and psychiatric hospitalization and professional counselling which continues to this day;
- b) Numerous attempts at suicide;
- c) Inability to sleep;
- d) Recurring nightmares;
- e) Difficulty in developing and maintaining healthy and meaningful interpersonal relationships;
- f) Inability to trust other individuals;
- g) Emotional and mental distress;
- h) Low self-esteem;
- i) major depression;
- j) Failed relationships;
- k) Problems with authority figures, leading to conflicts with employers;
- l) Lack of self-confidence;
- m) Inability to complete formal education;
- n) Loss of income;

38.25 That as a result of the assault upon their childhood innocence, physical safety, integrity and mental well-being, the experiences have left T.Y. and each Student Class Member emotionally and mentally scarred and with the inability to properly function as a person, man, husband and parent;

- 38.26 The Plaintiff T.Y. and other Student Class Members have a general anxiety disorder and have suffered post-traumatic stress disorder;
- 38.27 As a consequence of these experiences, T.Y. and other Student Class Members have been put to medical expense and will require therapy and medical attention into the future;
- 38.29 The Petitioner M.Y. states that, as a result of the conduct set out in the foregoing paragraphs and the corresponding injuries and damage done to T.Y., she sustained injuries and damages, in particular, has suffered dramatic loss of care, guidance and companionship from T.Y. and has sustained other damages, including:
- a) Actual expenses reasonably incurred for the benefit of T.Y.;
 - b) Travelling expenses actually incurred in visiting T.Y.;
 - c) The provision of nursing, housekeeping and other services for T.Y.
- 38.29 Each family Class Member (39B) has suffered some or all of these damages in respect of a Student Class Member(s);
- 38.30 The Petitioners' damages and the damages of other Class Members have been suffered, and continue to be sustained in Quebec, and elsewhere;
- 39) Many of the sexual assaults perpetrated by Hill on Student Class Members were committed in the Province of Quebec;
- 40) The personal claims of each of the members of the two groups are based on similar facts fully described hereinabove;
- 41) **THE COMPOSITION OF THE GROUP MAKES THE APPLICATION OF ARTICLE 59 AND 67 C.C.P. DIFFICULT AND/OR IMPRACTICABLE FOR THE FOLLOWING REASONS:**
- 42.1 The Petitioners are unaware of the exact number of Members of the group, but it is estimated that there are large numbers of individuals and families affected by the wrongful behaviour of Hill and the negligence and breach of obligation of Respondent;
 - 42.2 It would be practically impossible for the Petitioners to locate and contact all of the members of the group, and equally practically impossible to obtain a mandate from all of the said Members;

42.3 In addition, given that Respondent's behaviour has recently been exposed, it is likely that many Members of the Group are not even aware of the damages they have suffered as a result of the above-described wrongful behaviour and breach of obligations;

42.4 Accordingly, a class action is the only (or certainly the most appropriate) procedural mechanism under these circumstances for the Members of the Group to efficiently and effectively enforce their rights and obtain justice against the Respondent;

42) **THE IDENTICAL, SIMILAR OR RELATED QUESTIONS OF LAW OR OF FACT BETWEEN EACH MEMBER OF THE GROUP AND THE RESPONDENT, WHICH THE PETITIONERS WISH TO HAVE DECIDED BY THIS CLASS ACTION ARE:**

43.1 Did Respondent owe a special duty of care or fiduciary duty to prevent its students from being victims of sexual abuse at the hands of one of its employees?

43.2 Did Respondent violate the dignity and right to privacy of its students?

43.3 Is Respondent responsible for the breach of trust, negligence and assault of its employee upon the person of its students?

43.4 Was the conduct of its employee Hill vis à vis the sexual abuse of his students, intentional, malicious and done with the knowledge that it would cause the students harm, prejudice, humiliation, indignity, physical and emotional distress and injury?

43.5 Was Respondent aware of the above described actions of its employee Hill, and when did it become aware?

43.6 If not aware, should Respondent have been aware of the above described wrongful actions of Hill?

43.7 Was the conduct of Hill harsh, vindictive, malicious and reprehensible?

43.8 Was the conduct of Hill offensive to the ordinary standards of decent conduct in the community which ought to be deterred?

43.9 Was Respondent negligent in placing Hill in a position of trust and authority, thereby facilitating Hill's capacity to do wrong against Petitioner T.Y. and all Student Class Members?

- 43.10 Did Hill inflict the abuse during the course of his employment with Respondent?
- 43.11 Could or should have Respondent foreseen someone in Hill's position in Respondent type of male school could result in Hill exercising undue control of youths in the school and provide Hill an opportunity to commit sexual abuse?
- 43.12 What steps did Respondent take to screen and monitor Hill and other teachers and administrators, particularly in respect of sexual practices pertaining to male youths at Respondent educational institution?
- 43.13 What background checks did Respondent carry out prior to and during the employment of Hill at Respondent institution?
- 43.14 Was Respondent aware that Hill had a propensity and background for carrying out abhorrent sexual practices with male youths and should it have known of said practices in the event that it did not know?
- 43.15 Did Respondent adopt proper and adequate hiring practices to ensure persons such as Hill would not be hired?
- 43.16 Did Respondent provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that Hill was suitable and fit to act as an employee of Respondent?
- 43.17 Did Respondent fulfil its duty to monitor the performance and behaviour of Hill to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of SHS should exhibit?
- 43.19 Did Respondent know of Hill's actions prior to his termination, and not withstanding same, took no steps to have him removed?
- 43.19 Did Respondent fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing Petitioners and the Class Members damages to begin, to continue or to become exacerbated as time went on?
- 43.20 Did Respondent fail to adequately protect students from those in positions of authority and power?
- 43.21 Is the Respondent liable for punitive damages in light of the wrongful behaviour of its employee Hill and its wrongful behaviour as above noted?

43.22 If the Respondent is liable for punitive and exemplary damages, what amount of punitive damages should Respondent be ordered to pay to Petitioners and to the Members of the Group? What amount of exemplary damage should Respondent pay?

43.23 Is Respondent responsible for the damages caused to wives, including common law wives, parents and children of the individual student victims?

The questions of law or fact which are particular to each of the members of the Group are as follows:

43) **The questions of law or fact which are particular to each of the members of the Group are as follows:**

44.1 **Determining the amount of the claim of each member of the Group;**

44.2 **Determining the amount of punitive and exemplary damages each member of the Group is entitled to receive from Respondent;**

44) **It is expedient that the institution of a Class Action for the benefit of the members of the Group be authorized for the following reasons:**

45.1 **The class action is the best procedural vehicle available to the members of the Group in order to protect and enforce their rights herein;**

45.2 **While the amount of damages sustained by each member of the Group may differ, the Respondent's wrongful behaviour and its liability therefore are identical for each member of the Group;**

45.3 **Evidence to be adduced, on the merits of this Class Action, of the Respondent's wrongful behaviour will be the same for each and every member of the Group, and it would therefore be expedient and efficient for one judge to hear all of the evidence, rather than having numerous judges hearing different evidence of the same wrongful behaviour on multiple occasions, which may, in turn, lead to contradictory judgments on questions of fact or of law, which are identical for each member of the Group;**

45.4 **In the absence of a class action herein, there would be no viable recourse for any victim against the Respondent to sanction its wrongful behaviour due to the cost and difficulty that an individual recourse would entail, relative to the benefits one could hope to obtain;**

45) **The nature of the recourse which Petitioners wish to exercise on behalf of the members of the Group is an Action in damages, compensatory and exemplary, and punitive damages against the Respondent:**

46.1 To sanction Respondent's breach of obligation and breach of trust;

46.2 To sanction its wrongful behaviour in tolerating and permitting sexual assaults against its students in elementary violation of the rights of said students and their families; and not informing parents of the victimized students of the said sexual abuse by its employee or former employee;

46) **The conclusions sought by the Petitioners are as follows:**

A) **GRANT THE Action;**

B) **DECLARE** the Respondent liable to the members of the Group for the damages that the members have suffered at the hands of its employee Hill and damages arising from Respondent's breach of obligation and failure to prevent or limit the on-going sexual attacks and physical violations of its students by a staff member;

C) **DECLARE** that Respondent is liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioners and the members of the Group;

D) **CONDEMN** the Respondent to indemnify each and every member of the Group for all damages that they have suffered as a result of Respondent's wrongful behaviour, omission and breach of obligation;

AND TO THIS END:

E) **CONDEMN** Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondent's wrongful behaviour during the period of the employment of Hill with Respondent; and **ORDER** the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;

F) **ORDER** the individual liquidation in favour of the Petitioners of a sum equivalent to their share of the damages claimed and **ORDER** that the

recovery of each of the members of the Group to be subject to individual liquidation or, if this process turns out to be inefficient or impracticable, **ORDER** the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Group or, if possible, **ORDER** the individual liquidation of the claims of the members of the Group together with whatever remedial measures the Court finds to be appropriate in the interests of the members of the Group;

- G) **CONDEMN** the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of Respondent in this matter, including the extra-judicial fees of counsel for Petitioners and the members of the Group and extra-judicial disbursements, including the costs of expertise;
- H) **ORDER** the Respondent to advise the members of the Group of the present Class Action lawsuit at its cost;
- I) **CONDEMN** the Respondent to any further relief as may be just and proper;

THE WHOLE WITH COSTS, INCLUDING THE COSTS OF ALL EXHIBITS, EXPERTS, EXPETISE AND PUBLICATION OF NOTICES.

- 47) The Petitioners request that they be ascribed the status of class representatives;
- 48) That the Petitioners are in a position to represent the members of the Group adequately for the following reasons:
 - 49.1 They are intelligent, dynamic, decent individuals;
 - 49.2 They have been deeply affected and consider it their moral obligation to seek justice through the judicial system in order to bring closure and justice to themselves and all members of the Group;
 - 49.3 That Petitioners understand and have been thoroughly advised as to the process involving this class action, particularly by their original attorneys, with whom they have made contact in the Province of Ontario;
 - 49.4 That Petitioners have and will fully co-operate with their attorneys in the context of this action, and have answered intelligently and properly each and every question put to them by their attorneys, and will continue to do so;

- 49.5 That Petitioners fully intend to fairly and adequately represent and protect the interests of the members of the Group, and consider this a solemn and irreversible obligation on their part;
- 49.6 The Petitioners are prepared to take the necessary measures to uncover facts relating to this action;

The Petitioners suggest that the Class Action be brought before the Superior Court for the District of Montreal for the following reasons:

- 49) The Petitioners suggest that the Class Action be brought before the Superior Court for the district of Montreal for the following reasons:
- 50.1 To the best of Petitioners' knowledge, many of the members of the Group are domiciled in the Province of Quebec and the district of Montreal;
- 50.2 The Petitioners' undersigned attorneys are practising in the District of Montreal;
- 50.3 The allegations and violations described herein were mostly perpetrated in the Montreal area;
- 50.4 The Respondent has its principle place of business in the District of Montreal;
- 50) The present Motion is well founded in fact and in law

WHEREFORE, YOUR PETITIONERS PRAY:

- A) **THAT** the present Motion be granted;
- B) **THAT** the institution of a class action in damages be authorized against the Respondent:
1. To sanction Respondent's breach of obligation and breach of trust;
 2. To sanction its wrongful behaviour in tolerating and permitting sexual assaults against its students in elementary violation of the rights of said students and their families;
- C) **THAT** Petitioners be ascribed the status of Representative for the benefit of the following group of persons, namely:

SUB-GROUP I

All students at Selwyn House School, who were the victims of a breach of trust, sexual assault and negligence and damaged therefrom as a result of the sexual, emotional and mental abuse perpetrated by Respondent's employee James P. Hill to Petitioner T.Y. and other Student Class Members;

SUB-GROUP II

Wives, including, common law wives, parents and children of the individual victims described in the above group, who were damages as a result of above-noted abuse;

- D) THAT the principle questions of law and of fact to be dealt with collectively be identified as follows:
1. Did Respondent owe a special duty of care or fiduciary duty to prevent its students from being victims of sexual abuse at the hands of one of its employees?
 2. Did Respondent violate the dignity and right to privacy of its students?
 3. Is Respondent responsible for the breach of trust, negligence and assault of its employee Hill, upon the person of its students?
 4. Was the conduct of its employee Hill vis à vis the sexual abuse of his students, intentional, malicious and done with the knowledge that it would cause the students harm, prejudice, humiliation, indignity, physical and emotional distress and injury? Did Hill act alone or with others employed by Respondent?
 5. Was Respondent aware of the above described actions of its employee Hill, and when did it become aware?
 6. If not aware, should Respondent have been aware of the above described wrongful actions of Hill?
 7. Was the conduct of Hill harsh, vindictive, malicious and reprehensible?
 9. Was the conduct of Hill offensive to the ordinary standards of decent conduct in the community which ought to be deterred?

9. Was Respondent negligent in placing Hill in a position of trust and authority, thereby facilitating Hill's capacity to do wrong against Petitioner T.Y. and all Student Class Members?
10. Did Hill inflict the abuse during the course of this employment?
11. Could or should have Respondent foreseen someone in Hill's position in Respondent type of male school could result in Hill exercising control of youths in the school and provide Hill an opportunity to commit sexual abuse?
12. What steps did Respondent take to screen and monitor Hill and other teachers and administrators, particularly in respect of sexual practices pertaining to male youths at Respondent educational institution?
13. What background checks did Respondent carry out prior to and during the employment of Hill at Respondent institution?
14. Was Respondent aware that Hill had a propensity and background for carrying out abhorrent sexual practices with male youths and should it have known of said practices in the event that it did not know?
15. Did Respondent adopt proper and adequate hiring practices to ensure persons such as Hill would not be hired?
16. Did Respondent provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that Hill was suitable and fit to act as an employee of Respondent?
17. Did Respondent fulfil its duty to monitor the performance and behaviour of Hill to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of SHS would exhibit?
19. Did Respondent know of Hill's actions prior to his termination, and notwithstanding same, took no steps to have him removed?
19. Did Respondent fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing Petitioners and the Class Members damages to begin, to continue or to become exacerbated as time went on?
20. Did Respondent fail to adequately protect students from those in positions of authority and power?

21. Is the Respondent liable for compensatory, exemplary and punitive damages in light of the wrongful behaviour of its employee Hill and its wrongful behaviour as above noted?
22. If the Respondent is liable for punitive and exemplary damages, what amount of punitive damages should Respondent be ordered to pay to Petitioners and to the Members of the Group? What amount of exemplary damages?
23. Is Respondent responsible for the damages caused to wives, including common law wives, parents and children of the individual student victims?

E) **THAT** the conclusions sought by the Petitioners in relation to such questions are as follows:

1. **GRANT** the Action;
2. **DECLARE** that the Respondent is liable to the members of the Group for the damages that the members have suffered during and subsequent to the period of employment of Hill at Respondent, resulting from the wrongful behaviour of Hill and Respondent;
3. **DECLARE** that the Respondent is liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioners and the members of the Group;
4. **CONDEMN** the Respondent to indemnify each and every Member of the Group for all damages that they have suffered as a result of the Respondent's wrongful behaviour;

AND TO THIS END:

5. **CONDEMN** Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondent's wrongful and illegal behaviour during the Class Period; and **ORDER** the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;
6. **ORDER** the individual liquidation in favour of the Petitioners of a sum equivalent to their share of the damages claimed, minimally estimated at \$1 million dollars each, and **ORDER** that the recovery of each of the members of the Group be subject to individual liquidation or, if this process turns out

to be inefficient or impracticable, **ORDER** the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Group or, if possible, **ORDER** the individual liquidation of the claims of the members of the Group together with whatever remedial measures the Court finds to be appropriate in the interests of the members of the Group and **RESERVE** rights of Petitioners to claim damages beyond \$1 million dollars each, taking into consideration deterioration in their health and any other prejudice resulting from the wrongful acts of Hill and Respondent;

7. **CONDEMN** the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of Respondent in this matter, including the extra-judicial fees of counsel for Petitioners and the members of the Group and extra-judicial disbursements, including the costs of expertise;
9. **ORDER** the Respondent to advise the members of the Group of the present Class Action lawsuit at its costs;
9. **CONDEMN** the Respondent to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, experts, expertise and publication of notices..

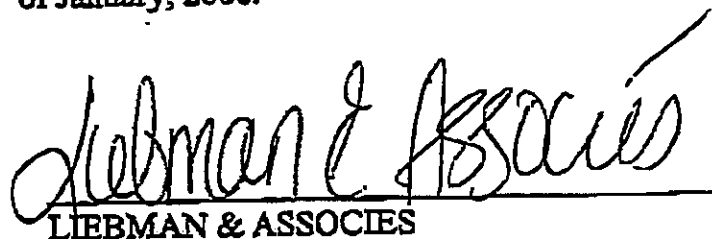
- F) **THAT** it be declared that any member who has not requested his or her exclusion from the Group be bound by any judgment to be rendered on the Class Action, in accordance with law;
- G) **THAT** the delay for exclusion from the Group be fixed at sixty (60) days from the date of notice to the members, and at the expiry of such delay the members of the Group who have not requested exclusion be bound by any such judgment;
- H) **THAT** it be ordered that a Notice to the members of the Group be published on the date to be determined by this Honourable Court in the following manner:
 - I. By transmission of a Media Release, accompanied by the Notice to Members, to the principal written and electronic media outlets published or broadcast in Canada;
 - II. By publication of a Notice to Members on the Internet sites of the Respondent with a hypertext link entitled "Avis aux Membres du Recours Collectif/Notice to Class Action Members" prominently displayed on Respondent's Internet site and to be maintained there until the Court orders

publication of another Notice to Members by final judgment pronounced in this instance or otherwise;

- III. By publication in the Montreal Gazette, the Globe & Mail, the Vancouver Sun and the New York Times, on two separate dates;
 - IV. By ordinary mail to the last known address(es) for Student Class Members in the possession or control of the Respondent SHS;
 - V. By email to the last known email address(es) for Student Class Members in the possession or control of the Respondent SHS;
- D) THAT the record be referred to the Chief Justice so that he may fix the district in which the Class Action is to be brought and the judge before whom it will be heard;
- J) THAT in the event that the Class Action is to be brought in another district, the Clerk of this Court be ordered, upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated;

THE WHOLE with costs, including the publication of notices.

Dated at MONTREAL, this 26th of January, 2006.



LIEBMAN & ASSOCIES
COUNSEL FOR PETITIONERS