

Court File No.

CP
05-CV-297637-~~213~~

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

M.G. and G.M.

Plaintiffs

- and -

L'ASSOCIATION SELWYN HOUSE,
carrying on business as "Selwyn House School"

Defendant

Proceedings under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

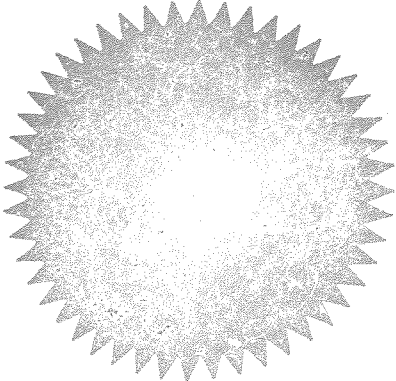
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF



YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$500.00 for costs and have the costs assessed by the court.

Date Sept 28th
~~August~~, 2005

Issued by


Local Registrar

Court Office: 393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: L' ASSOCIATION SELWYN HOUSE,
carrying on business as "Selwyn House School"
95, chemin Cote St-Antoine
Westmount Quebec
H3Y 2H8

CLAIM

1. (a) The plaintiff M.G. (“the student representative plaintiff”) on his own behalf and on behalf and of all student class members (the “Student Class Members”), claims against the defendant;

- i. compensation for breach of trust, breach of fiduciary duties, negligence, trespass, assault and damages for intentional infliction of mental distress occasioned as a result of Leigh Seville sexual, emotional and mental abuse of the student representative plaintiff and student class members, in the amount of \$15,000,000.00;
- ii compensation for breach of trust, breach of fiduciary duties, negligence for hiring, employing and inadequately supervising its personnel, including Seville, and in failing to protect the interests of the student plaintiffs 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 plaintiffs from the abuse perpetuated upon them by Seville in the amount of \$15,000,000.00;
- iii damages for vicarious liability in hiring, employing and inadequately supervising Seville and in failing to protect the interest of the student plaintiffs in the amount of \$15,000,000.00;
- iv damages for breach of Selwyn House School’s duty of care set out in section 3 of the *Occupiers’ Liability Act*, Chapter 0.2 R.S.O. 1990, in the amount of \$15,000,000.00;

- v punitive and exemplary damages in the amount of \$2,000,000.00;
 - vi aggravated damages in the amount of \$1,000,000.00;
 - vii special damages in an amount to be determined at trial;
 - vii An order certifying the herein action as a class proceeding pursuant to the *Class Proceedings Act*;
 - viii prejudgment and post-judgment interest pursuant to the *Courts of Justice Act* R.S.O. 1990, c.43, ss.128 and 129;
 - ix costs of this action on a complete indemnity basis;
 - x such further and other relief as this Honourable Court may deem just.
- d) The plaintiff, G.M. on behalf of herself and on behalf of all other *Family Law Act* class members (the “FLA Class Members”) claims:
- i. damages pursuant to the *Family Law Act* for loss of care, guidance and companionship and pecuniary loss;

- ii. pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act* R.S.O. 1990, c.43, s.128 and 129;
- iii. costs of this action on a complete indemnity basis;
- iv. such further and other relief as this Honourable Court may deem just.

- 2. The plaintiff M.G. currently resides in the City of Toronto, in the Province of Ontario, and was a student at Selwyn House School.
- 3. The plaintiff G.M. resides in the City of Toronto and is the wife of the plaintiff M.G.
- 4. The defendant, l'association Selwyn House, carrying on business as "Selwyn House School" ("SHS"), is a corporation incorporated pursuant to the laws of Quebec.
- 5. SHS is an independent college preparatory school for boys in Kindergarten through Grade 11 (senior year in Quebec high schools).
- 6. At all material times, Leigh Seville ("Seville") was a teacher, administrator, head of the middle house, employee, servant or agent of the defendant, Selwyn House School ("SHS").

7. SHS was founded in 1909 and claims to provide its students “with an education of exceptional depth and scope”.
8. The Student Class Members are all persons who were sexually abused by Seville while students at SHS.
9. The FLA Class Members are all persons who, by virtue of section 61 of the *Family Law Act*, R.S.O. 1990, c.F.3, are entitled to recover damages for injuries to the Family Class Members occasioned by the fault of neglect of the defendants.
10. Seville used his position of authority and supervisory capacity in order to cultivate an inappropriate relationship with M.G. in order to manipulate and lure M.G. and the other Student Class Members for the sole purpose of furthering his relationships with M.G. and the other Student Class Members, so as to perpetuate acts of sexual abuse on them.
11. MG. attended SHS for grades 3 through 11, until 1984.
12. In or about 1979, when the representative plaintiff, M.G. was a grade 7 student and approximately 12 years old, he attended SHS as a student, and at that time came into contact with Seville, who was a teacher, employee, servant or agent of SHS, committed battery and sexual assault of a homosexual nature on M.G. Seville subsequently assaulted M.G. on numerous other occasions. M.G. was 12 to 15 years old when the

assaults were perpetrated. Seville similarly committed those acts on the other Student Class Members.

13. M.G. states that Seville seized upon his and the other Student Class Members' vulnerability, which included their small stature, inexperience and young age and Seville's 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 to sexually assault and abuse M.G. and the other Student Class Members.
14. The time during which this abuse was occurring, M.G. felt scared, shocked, confused, frustrated and ashamed. He was afraid that others would find out about the abuse.

M.G. 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, M.G. 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 about the abuse.
15. M.G. pleads that Seville's conduct and actions in the 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. M.G. 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.

16. As a direct consequence of the abuse, M.G. 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 Seville and the damages caused by same.

17. As a result of the relationship that developed between the plaintiffs M.G. and the other Student Class Members, on the one hand, and Seville on the other hand, they became dependant upon Seville and vulnerable to Seville to such an emotional extent, that Seville owed M.G. and all 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 the dignity and privacy of their person; and

 - d) such further and other duties as may be advised prior to trial.

18. The plaintiff M.G. and the other Student Class Members state that Seville's aforesaid actions constitute a breach of trust, negligence and assault upon their person. Seville'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, Seville's conduct was done with the knowledge that M.G.'s and all Student Class Members' emotional and physical anguish would increase, and was done with wonton, careless and willful disregard to the consequences to them. Seville'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.
19. The plaintiffs claim and plead that SHS is vicariously responsible for the acts and conduct of its employees, in this case Seville, and SHS is negligent in that:
- a) Seville was an employee, servant or agent of SHS, and by placing him in a position of trust and authority, SHS facilitated Seville's capacity to do wrong and without that position and authority the wrong could have been prevented against the plaintiff M.G. and all Student Class Members;
 - b) Seville inflicted the abuse during the course of his employment;

- c) Seville's position with SHS was such that SHS could foresee that occupying that position could result in SHS exercising control of youths in the school, and provide him with the opportunity to commit sexual abuse;
- d) SHS knew or ought to have known, of Seville's actions involving M.G. and other male youths, including Student Class Members. Prior to the attacks upon M.G., SHS was aware, or should have been aware that Seville and other pedophiles had engaged in illegal and abhorrent sexual practices with male youths at SHS. Seville had exhibited a similar pattern of behaviour, with other male youths, and this pattern was known to, or should have been known by, Seville's superiors and fellow employees at SHS.
- e) SHS failed to adopt proper or adequate hiring practices to ensure persons such as Seville or would not be hired.
- f) SHS knew or ought to have known of Seville's relationship with M.G. and Student Class Members;
- g) SHS did not provide proper, adequate or effective training or monitoring, initially or on an ongoing basis, to ensure that Seville 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 Seville to ensure that his performance and behaviour were such as a qualified reasonable and prudent employee of SHS would exhibit; and
- i) Such further and other particulars as may be advised prior to trial.

20. In addition to the foregoing, the plaintiffs claim that SHS is vicariously liable for the acts and conduct of Seville, and/or negligent by reason of:

- a) Seville's status as an employee of SHS constituted a special endorsement of suitability and fitness of Seville for that position, upon which M.G., each Student Class Member and FLA Class Members relied;
- b) SHS knew, or ought to have known, that Seville was not suitable or fit to be employed at SHS, given the presence of males or an impressionable age. SHS knew, or ought to have known that Seville 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;
- c) SHS knew, or ought to have known of Seville's actions and took no steps to have him removed;

- d) SHS failed to provide leadership by implementing and enforcing guidelines on sexual abuse, thereby causing the plaintiffs and the class members damages to begin, continue and become exacerbated. SHS failed to warn potential victims of sexual abuse, such as M.G., that there was a risk that Seville might commit sexual assault and battery; and
- e) Such further and other particulars as may be advised prior to trial.

21. Further, and in addition to the foregoing, the plaintiffs claim vicarious liability against SHS by reason of:

- a) SHS did not provide regular, proper effective training, teaching guidelines or monitoring of Seville adequately or at all, to ensure that SHS was operating in accordance with, and as an institution holding itself out as a private boys school.
- b) SHS failed to respond properly or take appropriate steps to protect potential victims, such as M.G. and the other Student Class Members, where information was obtained Seville 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 insure that there were no victims or perpetrators; and
- c) such further and other particulars as may be advised prior to trial.

22. The plaintiff M.G. states that as a result of the relationship between him and the other Student Class Members and Seville, the plaintiff M.G. and the other Student Class Members became dependant upon and vulnerable to Seville, to the extent that SHS owed the plaintiff M.G. and the 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 positions of authority;
- d) not to employ Seville; and
- e) such further and other breaches as may be advised prior to trial.

23. The plaintiffs state that the action or inaction of SHS as aforesaid, constitutes a breach of trust and negligence, in the hiring, employing and inadequately supervising Seville and in the failing to protect the plaintiff M.G.'s and the other Student Class Members' interests.

24. The plaintiffs state and plead that the conduct of Seville and SHS, in general, is reprehensible and is conduct which should be deterred and the plaintiff M.G. and the other Student Class Members are therefore entitled to punitive and exemplary damages.
25. The plaintiffs plead that SHS as occupier, owned a duty to the plaintiff M.G., and all Student Class Members to ensure that 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 above, and the plaintiffs plead and rely upon the *Occupiers' Liability Act*, Chapter 0.2, R.S.O. 1990.
26. As a result of the abuse, the plaintiff M.G. and the other Student Class Members have encountered difficulty with females sexually. They become alienated from their family members, and their relationships with them have been adversely affected because of the sexual abuse. As a further result of Seville's actions as aforesaid, M.G. and the other Student Class Members have suffered serious and permanent injuries and general and special damages for which the defendants are all at law responsible including:
- a) ongoing severe emotional and psychiatric hospitalization and professional counseling 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;

p) such further and other damages as may be advised prior to trial.

27. As a result of the assault upon their childhood innocence, physical safety, integrity and mental well being, the experiences have left M.G. and each Student Class Member emotionally and mentally scarred and with the inability to properly function as a person, man, husband and parent. The plaintiff M.G. and the other Student ClassMembers have a general anxiety disorder and have suffered post-traumatic stress disorder.

28. As a consequence of these experiences M.G. and the student class members have been put to medical expense and will require therapy and medical attention.

29. The plaintiff G.M. states and pleads that, as a result of the conduct as set out in the foregoing paragraphs and the corresponding injuries and damage done to M.G. she sustained injuries and damages, in particular, has suffered dramatic loss of care, guidance and companionship from M.G. and has sustained other damages including:

a) actual expenses reasonably incurred for the benefit of M.G.;

b) travelling expenses actually incurred in visiting M.G.; and

c) the provision of nursing, housekeeping and other services for M.G.

30. Each Family Class Member has suffered some or all of these damages in respect of a Student Class Member or Members.
31. The plaintiffs' damages and the damages of other class members have been suffered and continue to be sustained in Ontario.
32. Some of the sexual assaults perpetrated by Seville on Student Class Members were committed in Ontario.
33. The plaintiffs rely on the provisions of sub-rules 17.02(g) and (h) of the Rules of Civil Procedure relative to service of the Statement of Claim outside Ontario.
34. The plaintiffs, therefore, submit that judgment be granted for the relief sought together with costs on a complete indemnity scale.

The plaintiffs propose that the within action be tried at the City of Toronto.

28-1

September 8, 2005

McPHADDEN SAMAC MERNER BARRY
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Solicitors for the plaintiffs

M.G. and G.M.

V. L'ASSOCIATION SELWYN HOUSE

05-cv-297637-PCP

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

*Proceedings under the Class Proceedings Act,
1992*

STATEMENT OF CLAIM

McPHADDEN SAMAC MERNER BARRY

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Solicitors for the plaintiffs

Court File No.

CP

05-CV-2976 37-PD3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR./MADAM JUSTICE

C. H. CAMPBELL

)
)
)

WEDNESDAY, THE 28TH DAY OF
SEPTEMBER, 2005

BETWEEN:

M.G. and G.M

Plaintiffs

- and -

L'ASSOCIATION SELWYN HOUSE,
carrying on business as "Selwyn House School"

Defendant

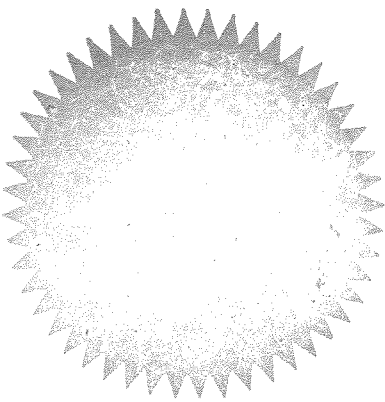
Proceedings under the Class Action Act, 1992

ORDER

THIS MOTION, made by the plaintiffs, without notice, for various relief set out in the notice of motion was heard this day at 393, University Avenue, Toronto.

ON READING the affidavit of David G. Merner, sworn September 16, 2005, and on hearing the submissions of counsel for the moving parties,

1. THIS COURT ORDERS that the plaintiffs be and the same are hereby granted leave to issue a Statement of Claim pursuant to the *Class Proceedings Act* using pseudonyms to identify the plaintiffs.



2. THIS COURT ORDERS that the plaintiffs and any and all putative class members be identified in all pleadings, transcripts, documents and proceedings by pseudonyms.

3. THIS COURT ORDERS that anyone having notice or knowledge of this order be, and the same is hereby, restrained from publishing or otherwise revealing the names of the plaintiffs, or either of them, or the identity or names of any putative class members or any feature that might disclose their identities, or the identity of any of them, save and except the parties to the action, who are at liberty to do so only to the extent necessary to prosecute or defend the action.

4. THIS COURT ORDERS that the plaintiffs' deliver forthwith a copy of this Order to the Toronto Star, the Globe and Mail, the National Post, Le Devoir, Le Journal de Montreal, La Presse, the Montreal Gazette, 680 News, CFRB 1010, the Canadian Broadcasting Corporation, Radio Canada, Televiseurs associes (TVA), CTV, and Global TV and provide a copy of the order to any other media outlet requesting the same.


5. THIS COURT ORDERS that the defendant or any media outlet shall be at liberty to move, on seven (7) days' notice, to amend, vary or set aside this order within a reasonable time after this order comes to its attention.

6. THIS COURT ORDERS that the costs of this motion be reserved to the trial judge or to any judge hearing a motion to amend, vary or set aside this order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 28 2005

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: 

M.G. and G.M.

V. L'ASSOCIATION SELWYN HOUSE

Court File No.

05-CV-297637-883

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

*Proceedings under the Class Proceedings Act,
1992*

ORDER

McPHADDEN SAMAC MERNER BARRY

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