

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 17<sup>th</sup>'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: