

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

SARAH DOUCET and L.K.

Plaintiffs

- and -

THE ROYAL WINNIPEG BALLET (carrying on business as
the Royal Winnipeg Ballet School) and BRUCE MONK

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(Certification Motion returnable June 7 and 8, 2018)**

THE PLAINTIFFS will make a motion to the Honourable Mr. Justice Perell on June 7 and 8, 2018 at 10:00 a.m. or as soon after that time as the motion can be heard at Osgoode Hall Court House, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order:
 - a. certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the *CPA*);
 - b. defining the classes as:

All persons who attended the Royal Winnipeg Ballet School from 1984 to 2015 who were photographed by Bruce Monk in a private setting (the Student Class),

including a subclass of:

All members of the Student Class whose intimate photographs taken by Bruce Monk were posted on the internet, sold, published or otherwise displayed in a public setting (the Privacy Subclass); and

All dependants of members of the Student Class, as defined by section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 (the Family Class);

c. certifying the following common issues:

Negligence

1. Did Bruce Monk owe a duty of care to the Student Class?
2. If the answer to (1) is yes, what is the applicable standard of care?
3. If the answer to (1) is yes, did Bruce Monk breach the duty of care that he owed to the Student Class? If so, when and how?
4. Did the Royal Winnipeg Ballet owe a duty of care to the Student Class?
5. If the answer to (4) is yes, what is the applicable standard of care?
6. If the answer to (4) is yes, did the Royal Winnipeg Ballet breach the duty of care that it owed to the Student Class? If so, when and how?

Breach of Fiduciary Duty and Breach of Trust

7. Did Bruce Monk owe a fiduciary duty to the members of the Student Class?
8. If the answer to (7) is yes, did Bruce Monk breach the fiduciary duty he owed to the Student Class? If so, when and how?

9. Did the Royal Winnipeg Ballet owe a fiduciary duty to the members of the Student Class?
10. If the answer to (9) is yes, did the Royal Winnipeg Ballet breach the fiduciary duty it owed to the Student Class? If so, when and how?
11. Was Bruce Monk a trustee of the Student Class with respect to the intimate photographs, and if so, did he breach the duty of trust imposed upon him with respect to maintaining the confidentiality of the photographs?

Breach of Contract

12. Was it an express and/or implied term of the Student Class' contracts with the Royal Winnipeg Ballet, that the Royal Winnipeg Ballet would take all reasonable steps to safeguard the safety, security and well-being of the Student Class while attending the Royal Winnipeg Ballet School?
13. If the answer to (12) is yes, did the Royal Winnipeg Ballet breach that term of the contracts?

Breach of Confidence

14. Were the intimate photos of the Student Class members taken by Bruce Monk confidential?
15. If the answer to (14) is yes, did the circumstances in which the photographs were taken import an obligation of confidence upon Bruce Monk?
16. If the answer to (15) is yes, was posting the intimate photos of the Privacy Subclass on the internet, selling the photographs, or otherwise publishing or displaying the photographs in public an unauthorized use of the photos?
17. If the answer to (15) is yes, did the unauthorized use of the intimate photographs harm the Privacy Subclass members?
18. If the answer to (15) is yes, did the unauthorized use of the Privacy Subclass members' photographs also cause harm to the rest of the Student Class?

Intrusion Upon Seclusion

19. Did Bruce Monk intentionally abuse his position of power or trust over the members of the Student Class or otherwise coerce them to pose in the nude or semi-nude, and did he intentionally take intimate photographs of the members of the Student Class?
20. Did Bruce Monk invade, without lawful justification, the private affairs or concerns of the members of the Student Class?
21. Would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?
22. Is Bruce Monk liable for the tort of intrusion upon seclusion?

Public Disclosure of Private Facts

23. Would the publication, public display, posting on the internet and/or sale of the intimate photographs of the Privacy Subclass be highly offensive to a reasonable person of ordinary sensibilities?
24. Was the publication, public display, posting on the internet and/or sale of the intimate photographs of the Privacy Subclass of legitimate concern to the public?
25. If the answer to (23) and (24) is yes, is Bruce Monk liable to the Privacy Subclass for the tort of public disclosure of private facts?

Unjust enrichment

26. Was Bruce Monk enriched at any time between 1984 to the date of certification of this action as a class proceeding as a result of the publication, public display or sale of the intimate photographs of the Privacy Subclass?
27. If the answer to (26) is yes, did the members of the Privacy Subclass suffer a corresponding deprivation?
28. If the answer to (27) is yes, was there a juristic reason for Bruce Monk's enrichment?

Sexual Assault, Sexual Violence and Sexual Exploitation

29. Did Bruce Monk sexually assault the Student Class?
30. Did Bruce Monk sexually abuse the Student Class?
31. Did Bruce Monk engage in sexual battery against the Student Class?
32. Has Bruce Monk sexually exploited the members of the Student Class pursuant to the *Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94 by taking or purporting to take intimate photographic images of the Student Class?
33. Has Bruce Monk sexually exploited the members of the Privacy Subclass pursuant to the *Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94 by disseminating intimate images of members of the Privacy Subclass from or after April 30, 2012?

Occupiers Liability

34. Did the Royal Winnipeg Ballet owe a duty as an occupier pursuant to *The Occupiers' Liability Act*, C.C.S.M. c. O8 to take reasonable care to ensure the safety of the Student Class members while on the its premises?
35. If the answer to (34) is yes, did the Royal Winnipeg Ballet breach its statutory duty as an occupier?

Privacy Statutes

36. Has Bruce Monk violated the privacy of the Student Class or the Privacy Subclass under:
 - a. section 2(1) of *The Privacy Act*, C.C.S.M. c. P125,
 - b. sections 1 and 3 of the *Privacy Act*, RSBC 1996 c. 373,
 - c. section 2 of *The Privacy Act*, RSS 1978, c. P-24,
 - d. section 3 of the *Privacy Act*, RSNL 1990 c. P-22, and/or
 - e. sections 3 and 35-37 of the *Civil Code of Quebec*, CQLR c CCQ-1991?

37. Has Bruce Monk breached section 11(1) of the *Intimate Image Protection Act*, CCSM c. I87 with respect to the Privacy Subclass?
38. If the answer to (36) is yes, is the Privacy Subclass entitled to damages, including general, special, aggravated and or punitive damages?
39. If the answer to (37) is yes, is Bruce Monk required to account to the Privacy Subclass for all the profits that have accrued to him as a result of the non-consensual distribution of the Privacy Subclass' intimate images, pursuant to s. 14 of the *Intimate Image Protection Act*, CCSM c. I87?

Vicarious Liability

40. Is the Royal Winnipeg Ballet vicariously liable for the wrongful conduct of its employee, Bruce Monk?

Family Law Act Dependents' Liability

41. Is either Bruce Monk or the Royal Winnipeg Ballet liable to the Family Law Class for any damages they have incurred pursuant to s. 61 *Family Law Act*, RSO 1990, c. F.3?

Aggregate Damages

42. If Bruce Monk and/or the Royal Winnipeg Ballet are liable on a class-wide basis, can damages sustained by members of the Student Class, the Privacy Subclass and/or the Family Class be assessed, in whole or in part, on an aggregate basis?
43. If the answer to (42) is yes, what is the quantum of aggregate damages owed to those class members?
44. If the answer to (42) is yes, what is the appropriate method or procedure for distributing the aggregate damages award to those class members?

Punitive Damages

45. Does the conduct of Bruce Monk justify an award of punitive, exemplary and/or aggravated damages?

46. If the answer to (45) is yes, can those damages be assessed on a class wide basis, and if so, in what amount?
 47. Does the conduct of the Royal Winnipeg Ballet justify an award of punitive, exemplary and/or aggravated damages?
 48. If the answer to (47) is yes, can those damages be assessed on a class wide basis, and if so, in what amount?
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- d. appointing Sarah Doucet as the representative plaintiff for the Student Class;
 - e. appointing L.K. as the representative plaintiff for the Family Class;
 - f. declaring that a class action is the preferable procedure for the resolution of the certified common issues;
 - g. approving the proposed litigation plan, including the proposed notice of certification, and notice program;
 - h. requiring the defendants to pay the costs of the notice program as set out in the litigation plan;
 - i. directing that members of the classes who elect to opt out of the class proceeding must do so within 90 days of the date of the first publication of the notice of certification, and must do so in the manner specified in the litigation plan;
 - j. staying any other proceeding based on the facts giving rise to this proposed class proceeding, except any proceeding commenced by a person who has opted out of the class proceeding;

- k. declaring that no other proceeding based upon the facts giving rise to this proceeding may be commenced without leave of the court;
 - l. that the defendants shall pay to the plaintiffs their costs of this motion plus any applicable taxes, fixed and payable forthwith; and
- (b) such further and other relief as this Honourable Court shall deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) this action was commenced on November 17, 2016 pursuant to the *CPA*;
- (b) the proposed representative plaintiff, Sarah Doucet, advances claims in negligence, breach of fiduciary duty and breach of trust, breach of contract, breach of confidence, intrusion upon seclusion, public disclosure of private facts, breach of privacy legislation, unjust enrichment, sexual assault, sexual battery, sexual exploitation, occupiers' liability, and vicarious liability against the Royal Winnipeg Ballet, and/or a former teacher at the Royal Winnipeg Ballet School, Bruce Monk, with respect to injuries suffered by current and former students of the Royal Winnipeg Ballet, arising from the multiple instances of Bruce Monk taking intimate photographs of Royal Winnipeg Ballet students and the Royal Winnipeg Ballet's failure to take reasonable steps to ensure the welfare, safety and well-being of its students;
- (c) the proposed representative plaintiff, L.K., advances claims under section 61 of the *Family Law Act*, R.S.O. 1990, c F.3 against the Royal Winnipeg

Ballet and Bruce Monk with respect to the damages suffered by herself and all dependants of Sarah Doucet and the Student Class arising from the injuries and losses sustained by Sarah Doucet and the Student Class;

- (d) in addition to taking the intimate images of the Student Class, Bruce Monk published, publicly displayed, posted, disseminated and sold intimate images he took of the Privacy Subclass without their consent;
- (e) because of Bruce Monk's position of authority, power, dominance, trust and his fiduciary duty owed to the Student Class, no member of the Student Class could or did voluntarily consent to him taking their intimate images, nor could they voluntarily consent to Bruce Monk publishing, publicly displaying, posting, disseminating or selling their images;
- (f) the Royal Winnipeg Ballet failed to adequately supervise Bruce Monk, or to put in place sufficient controls, supervision and procedures to ensure that the Student Class would be safe from persons in positions of trust and authority such as Bruce Monk, a teacher at the School, abusing their positions, taking intimate pictures of the students, and thereafter disseminating them publicly;
- (g) the pleadings disclose causes of action in negligence, breach of fiduciary duty and breach of trust, breach of contract, breach of confidence, intrusion upon seclusion, public disclosure of private facts, breach of privacy legislation, unjust enrichment, sexual assault, sexual battery, sexual exploitation, occupiers' liability, and vicarious liability and under section 61

of the *Family Law Act*, R.S.O. 1990, c F.3 against the defendants, the Royal Winnipeg Ballet and Bruce Monk;

- (h) there is a class consisting all current and former students who attended the Royal Winnipeg Ballet School from 1984 to 2015 who were photographed by Bruce Monk in a private setting (the Student Class);
- (i) there is subclass consisting of all members of the Student Class whose intimate photographs taken by Bruce Monk were published, publicly displayed, posted on the internet and/or sold (the Privacy Subclass);
- (j) there is a class consisting of all dependents of members of the Student Class, as defined by section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 (the Family Class);
- (k) the Student Class is objectively defined and readily ascertainable, membership being comprised of those who are current or former students of the Royal Winnipeg Ballet who attended the School between 1984 to 2015 and who were photographed by Bruce Monk in a private setting;
- (l) the Privacy Subclass is objectively defined, membership being comprised of those who are members of the Student Class whose intimate images were published, publicly displayed, posted on the internet and/or sold by Bruce Monk;

- (m) the Family Class is objectively defined, membership being comprised of those who are dependants of members of the Student Class, as defined by section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3;
- (n) there is a rational relationship between the classes and the common issues and the classes are not unnecessarily broad;
- (o) the claims alleged in the Fresh Amended Amended Statement of Claim raise common issues of fact and law, the determination of which will move the litigation substantially forward;
- (p) a class proceeding is not only the preferable procedure for resolving the common issues, but it is the only manner by which these claims can be realistically adjudicated;
- (q) a class proceeding in this case would constitute the fairest, most efficient and manageable means of adjudication of the common issues;
- (r) the proposed representative plaintiffs, Sarah Doucet and L.K., can fairly and adequately represent the interests of the class, with whom they have no conflict on the common issues;
- (s) the proposed representative plaintiffs have produced a workable litigation plan for advancing the claims on behalf of the class up to the common issues trial and afterwards;

- (t) the notice program is a reasonable method of notifying the class members of certification of the action as a class proceeding;
- (u) sections 2, 5, 6, 7, 9, and 12 of the *CPA*;
- (v) rules 12, and 37 of the *Rules of Civil Procedure*; and
- (w) such further and other grounds as counsel advises and this Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of John Kingman Phillips, sworn September 14, 2017;
- (b) the affidavit of Sarah Doucet, sworn September 16, 2017;
- (c) the affidavit of LK, sworn September 16, 2017;
- (d) the affidavit of Victoria May, sworn September 21, 2017;
- (e) the affidavit of Alanna Jones, sworn September 20, 2017;
- (f) the affidavit of Serena McCarroll, sworn September 19, 2017;
- (g) the affidavit of Dr. Mary Anne Franks, sworn October 30, 2017;
- (h) the affidavit of John D. Snowdy, sworn November 3, 2017; and
- (i) such further and other material as counsel may advise and this Honourable Court may permit.

November 29, 2017

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SARAH DOUCET and L.K.
Plaintiffs

-and-

THE ROYAL WINNIPEG BALLET and BRUCE MONK
Defendants

Court File No. CV-16-564335-00CP

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PROCEEDING COMMENCED AT TORONTO

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