

## Notice of Certification of a Class Action

# **If you were a student at the Royal Winnipeg Ballet School from 1984 -2015 and, while enrolled at the School, you were photographed by Bruce Monk in a private setting, a class action lawsuit may affect your rights.**

This Notice is for all persons who:

- (i) attended the Royal Winnipeg Ballet School from 1984 – 2015 and, while enrolled at the School, were photographed by Bruce Monk in a private setting (the “Student Class”), including a subclass of all members of the Student Class whose intimate photos taken by Bruce Monk were posted on the internet, sold, published, or otherwise displayed in a public setting (the “Privacy Subclass”), and
- (ii) 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”).

A class action commenced by Plaintiffs Sarah Doucet and L.K. has been certified by the Ontario Superior Court of Justice against the Royal Winnipeg Ballet (“RWB”), carrying on business as the Royal Winnipeg Ballet School, and Bruce Monk. The claim seeks compensation for the injuries and losses suffered by the Class Members as a result of Bruce taking or purporting to take of intimate photographic images of the Plaintiff and the Student Class. For the Privacy Subclass damages are also sought for the injuries and losses arising from Monk selling and/or disseminating their intimate images on the internet and elsewhere.

The Court made an order allowing the action to be prosecuted on behalf of the Class Members; but it has not decided whether the Royal Winnipeg Ballet and/or Bruce Monk are liable. The Defendants deny liability. There is no money to be paid to the Class at this time, and no guarantee that there will be in the future. However, as a Class Member, your legal rights are affected, as you will be bound by any orders of the court, including a judgement on the common issues, and approval of any settlement, should a settlement be reached between the parties.

If you do not wish to be included in the class action, you have a choice to exclude yourself from the lawsuit (“Opt-Out”). If you opt out, you will not be bound by any court decision, nor will you be able to participate in any future judgment or settlement of the action.

### **LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<b>DO NOTHING</b> <b>Stay in the lawsuit</b>	<p>If you do nothing, you will automatically be included as a member of the Class. You do not need to take any further action now to stay in the lawsuit.</p> <p>Await the outcome. You will be bound by any judgment on the common issues or any court-approved settlement.</p> <p>Give up certain rights. By doing nothing, you are choosing to stay in the lawsuit. You will keep your right to share in possible money or other benefits that may come from the trial or a possible settlement, however,</p>
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	you will also be bound by any negative results. You are giving up the right to sue the RWB and/or Bruce Monk on your own in connection with the taking and selling of intimate images.
<b>OPT OUT</b> <b>Remove yourself from the lawsuit</b>	<p>If you choose to opt out of the class action, then you will not be bound by any court orders. This means that you will get no money or benefits if the action succeeds or a settlement is negotiated. This also means that you will not be bound by any negative results.</p> <p>If you exclude yourself, you keep the right to sue the RWB and/or Bruce Monk on your own in connection with the taking and selling of intimate images.</p> <p>If you intend to opt out and sue the RWB or Bruce Monk on your own, you should be aware that there may be limitation periods that apply to your claim, and the time within which an action may be started. You should consult a lawyer to obtain advice about your rights to bring an individual action.</p>

Your rights and options are explained in this notice.

To **Opt Out**, you must act by **November 2, 2018**. Follow the instructions below.

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**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca),  
or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

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## BASIC INFORMATION

#### 1. Why did I get this notice?

The lawsuit is known as: Doucet and L.K. v. The Royal Winnipeg Ballet (carrying on business as the Royal Winnipeg Ballet School) and Bruce Monk. The Royal Winnipeg Ballet and Bruce Monk are called the “Defendants”.

The Ontario Superior Court of Justice authorized this notice to let you know that it has allowed, or “certified,” a class action lawsuit that may affect your rights. There will be a trial to decide certain “common issues” that relate to the Plaintiffs’ claims that the Royal Winnipeg Ballet and/or Bruce Monk, acted in a manner that caused harm to the members of the Student Class.

A copy of the Court’s Reasons for Decision approving the action as a class proceeding can be viewed at: <http://waddellphillips.ca/wp-content/uploads/2018/07/18.06.27-Reasons-for-Decision-of-Perell-J.-redacted.pdf>

Once the common issues are decided at the common issues trial, there will then be individual hearings to determine if the Defendants are liable to any individual Class members and if so, the amount of damages to which the Class Members are entitled. Each Class Member will have an opportunity to decide if they wish to participate in an individual hearing to claim for her losses after the common issues are decided.

If you meet the Class definition, then you will be bound by the Court’s decisions as the case proceeds to the end of the common issues trial. You will also be bound by any settlement that is approved by the Court.

#### 2. What is a class action?

In a class action, one or more people called “Representative Plaintiff(s)” (in this case, Sarah Doucet and L.K.) sue on behalf of people who have similar claims. All of these people are called a “Class” or “Class Members.” One Court resolves the issues that are the same for everyone affected (common issues), except for those who exclude themselves from the lawsuits.

## THE CLAIMS IN THE LAWSUIT

#### 3. What does the lawsuit complain about?

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca), or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

The Action has asserted many different claims against the Defendants. The claims include allegations of negligence, vicarious liability, breach of fiduciary duty\*, breach of contract, breach of trust, intrusion upon seclusion, breach of confidence, public disclosure of private facts, unjust enrichment, sexual assault and sexual abuse, privacy statute violations, and dependants' derivative claims under s. 61 of the *Family Law Act*.

\* a fiduciary is a person who holds a special relationship of trust and is obliged to act in the best interests of another

A copy of the statement of claim can be viewed on Class Counsel's website at:  
<http://waddellphillips.ca/wp-content/uploads/2017/07/17.09.19-Fresh-Amended-Amended-Statement-of-Claim.pdf>

#### 4. How do the Defendants answer these allegations?

The Defendants have denied that they are liable to the Class. Their statements of defence are also available to be seen at:

<http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/>

#### 5. Has the Court decided who is right?

No decision about whether the Plaintiffs or the Defendants are right has been made. The lawyers for the Plaintiffs will present their claims and the lawyers for the Defendants will argue their defenses at a common issues trial. The trial will not take place for some time. Updates about the status of the action will be posted on Class Counsel's website.

As a Class Member, you are not obliged to participate in the common issues trial. Once the common issues trial is completed, if the Plaintiffs are successful, then you will have an opportunity at an individual hearing to establish if you are entitled to compensation. In light of the common issues that were allowed by the court in this case, it is likely that each class member will also have to prove their entitlement to receive a payment at an individual hearing after the common issues are decided.

#### 6. What are the Plaintiffs asking for?

The Plaintiffs are asking that money be paid to the Class Members who suffered damages and injuries as a result of their intimate photos being taken by Bruce Monk, and for the Privacy Subclass additional damages are sought for the breach of privacy, and Monk's unjust enrichment from selling photographs without Class Members' consent. More information on the specific claims are set out in the Statement of Claim,

#### 7. What are the Common Issues?

The certification order sets out all the common issues that will be decided at the common issues trial. They are:

##### **Negligence**

- a) Did Mr. Monk owe a duty of care to the Student Class?
- b) If the answer to (a) is yes, what is the applicable standard of care?
- c) Did the Royal Winnipeg Ballet owe a duty of care to the Student Class?

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- d) If the answer to (c) is yes, what is the applicable standard of care?

**Breach of Fiduciary Duty and Breach of Trust**

- e) Did Mr. Monk owe a fiduciary duty to the members of the Student Class?
- f) Did the Royal Winnipeg Ballet owe a fiduciary duty to the members of the Student Class?
- g) Was Mr. 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**

- h) 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?

**Breach of Confidence**

- i) Were the intimate photos of the Student Class members taken by Mr. Monk confidential?
- j) If the answer to (i) is yes, did the circumstances in which the photographs were taken import an obligation of confidence upon Mr. Monk?
- k) If the answer to (j) 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?

**Intrusion Upon Seclusion**

- l) Did Mr. Monk invade, without lawful justification, the private affairs or concerns of the members of the Student Class?
- m) Would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?

**Public Disclosure of Private Facts**

- n) 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?
- o) 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?

**Privacy Statutes**

- p) Has Mr. 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?
- q) Has Mr. Monk breached section 11(1) of the *Intimate Image Protection Act*, CCSM c. 187 with respect to the Privacy Subclass?
- r) If the answer to (q) is yes, is the Privacy Subclass entitled to damages, including general, special, aggravated and or punitive damages?
- s) If the answer to (q) is yes, is Mr. 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. 187?

#### **Vicarious Liability**

- t) Would the Royal Winnipeg Ballet be vicariously liable for the wrongful conduct of its employee, Mr. Monk?

#### **Family Law Act Dependants Liability**

- u) Is either Mr. 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?

#### **Punitive Damages**

- v) Does the conduct of Mr. Monk justify an award of punitive, exemplary and/or aggravated damages?
- w) Does the conduct of the Royal Winnipeg Ballet justify an award of punitive, exemplary and/or aggravated damages?

#### 8. Is there any money available now?

No. There is no money available now because the Court has not yet decided whether the RWB and/or Monk did anything wrong. There is no guarantee that money or benefits will ever be obtained; however, if they are, you will be notified about how to ask for a share.

## **WHO IS INCLUDED IN THE LAWSUIT**

#### 9. How do I know if I am part of this class action?

The lawsuits include two groups of people called a "Student Class" and "Family Class."

You are part of the Student Class if you attended the Royal Winnipeg Ballet School from 1984 – 2015 (the "Class Period") and, while attending the School, you were photographed by Bruce Monk in a private setting. This includes a subclass of all members of the Student Class whose intimate photos taken by Bruce Monk were posted on the internet, sold, published, or otherwise displayed in a public setting.

You are part of the Family Class if you are the spouse, child, grandchild, parent, grandparent or sibling of a Student Class Member resident in Ontario, who has suffered damages arising from the injuries and losses sustained by the Student Class Member.

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca), or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

10. What do I do if I am not sure if I am included?

If you are still not sure whether you are included, you may call Waddell Phillips PC at 647-261-4486 or email [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca) with questions. A confidential inquiry can also be made by completing the form at: <http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/>

## RIGHTS AND OPTIONS FOR CLASS MEMBERS

11. What happens if I do nothing?

If you do nothing, you are choosing to stay in the lawsuit. This means that if the Plaintiffs win or lose at the trial, you will be legally bound by all orders and judgments of the Court. You will not be able to start or continue with a lawsuit against the RWB and/or Monk about the same legal claims that are included in these lawsuits. However, if the Plaintiffs get money or benefits from the RWB and/or Monk at the trial or as the result of settlements, you will be notified about how to ask for a share or what your options are at that time. These things are not yet known. If the Plaintiffs win at the common issues trial, but individual hearings are needed to prove your own claim, you will be notified and provided with details about how the individual claim process will work.

12. What happens if I exclude myself?

If you exclude yourself, you will not be able to get any money or benefits from this lawsuit if any are received as a result of the trial or a settlement. But, you may sue the RWB and/or Monk on your own in the future. You will not be bound by anything that happens in this lawsuit.

13. If I don't exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue the RWB and/or Bruce Monk for the legal claims in these lawsuits. You must exclude yourself from these cases to start your own lawsuit. Remember, the exclusion deadline is **November 2, 2018**.

14. How do I exclude myself from the Class Action?

To exclude yourself, you must send a message to Class Counsel that is signed by you and states that you are choosing to Opt-Out of the class action. You can use the Opt-Out form at page 10 of this Notice, or you can simply write, fax or email a message to Class Counsel, that includes your name, address, years of attendance at the RWB, and that is signed by you. If you mail your Opt-Out form, it must be postmarked by **November 2, 2018**.

Opt Out forms are to be sent to: Royal Winnipeg Ballet Class Action, Waddell Phillips Professional Corporation, 36 Toronto Street, Unit 1120, Toronto, Ontario, M5C 2C5.

Fax: 416-477-1657

Email: [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca)

**Deadline for Opting Out:**

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca), or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

No opt out forms or requests to opt out will be accepted after 5 pm on **Friday, November 2, 2018**. If you have not excluded yourself from the action by that date and time, you will automatically be included in the class action as a Class Member, and you may not exclude yourself thereafter.

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca),  
or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

## THE LAWYERS IN THE CASE

### 15. Do I have a lawyer?

Waddell Phillips Professional Corporation of Toronto, Ontario are Class Counsel. Class Counsel are the Plaintiffs' lawyers, and are prosecuting the action in the best interests of the Class as a whole. Class Counsel are experienced in handling similar cases.

More information about Waddell Phillips Professional Corporation, their practices, and their lawyers' experience is available at [www.waddellphillips.ca](http://www.waddellphillips.ca).

### 16. How will the lawyers be paid?

Class Counsel have been retained by the Plaintiffs on a 25% contingency fee basis. If Class Counsel gets money for the Class, they will ask the Court to approve payment of their fees and expenses from the amount to be paid to the Class. If the Court grants their request, the fees and expenses will either be deducted from any money obtained for the Classes or paid separately by the RWB and/or Bruce Monk. You will not personally have to pay any of these fees and expenses. Class Counsel do not get paid any fees until the Court approves the payment.

### 17. Are there any other payments to be made from a judgment or settlement?

Yes. This action has been funded by the Ontario Class Proceedings Fund. The Class Proceedings Fund is paying many of the expenses associated with prosecuting this action, and it will pay any court costs that are awarded against the Plaintiffs if any step in the action is not successful. In return, if the action settles or there is a judgment in favour of the Class, the Class Proceedings Fund is entitled to receive 10% of the net recovery, and reimbursement of the expenses it has paid.

## THE TRIAL

### 18. How and when will the Court decide who is right?

Unless the action is resolved by a settlement, the Plaintiffs will have to prove their claims at a common issues trial. During the trial, a judge will hear all of the evidence against the RWB and Bruce Monk, as well as all the Defendants' evidence about why they should not be held responsible for the claims made against them. The judge will then decide the common issues. The common issues are set out in the Certification Order, a copy of which is available at: <http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/>

### 19. Do I have to come to the trial?

No. You do not need to attend the trial. Class Counsel will present the case for the Plaintiffs, and the Defendants' lawyers will present their defenses. You are welcome to come and watch any part of the trial, but you don't have to. If you wish to participate at the common issues trial, you should contact Class Counsel and they will discuss that option with you.

### 20. Will I get money after the trial?

If the Plaintiffs succeed at the trial or if a settlement is approved by the court, you will be notified about how to ask for a share of the proceeds.

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca), or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

Based on the common issues that were allowed by the Court, it is likely that each Class Member will have to prove their entitlement to receive a payment at an individual hearing after the common issues are decided.

## GETTING MORE INFORMATION

### 21. How do I get more information about the lawsuit?

This notice summarizes the lawsuit. More details are in the Statement of Claim and in the Certification Order.

You can view a copy of the Statement of Claim at <http://waddellphillips.ca/wp-content/uploads/2017/07/17.09.19-Fresh-Amended-Amended-Statement-of-Claim.pdf> or by calling 647-261-4486.

You can view a copy of the Certification Order at <http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/>

You may also write with questions to:

Waddell Phillips Professional Corporation  
36 Toronto Street, Unit 1120,  
Toronto, Ontario, M5C 2C5

Attn. Royal Winnipeg Ballet Class Action

or email your questions to:

[reception@waddellphillips.ca](mailto:reception@waddellphillips.ca).

or fill in the confidential inquiry form at <http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/>

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca),  
or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**

## EXCLUSION REQUEST (OPT-OUT) FORM

I attended the Royal Winnipeg Ballet School during the Class Period (1984 – 2015), from:

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Dates of attendance at RWB

I want to be **EXCLUDED** from the Royal Winnipeg Ballet class action lawsuit (*Doucet and L.K. v. The Royal Winnipeg Ballet (carrying on business as the Royal Winnipeg Ballet School) and Bruce Monk*).

I understand that if I exclude myself, I will not be able to get any money or benefits from this case if the action is success at trial or by way of settlement. I will not be bound by any Court orders in the class action. I will keep any rights I may have to sue the Royal Winnipeg Ballet and/or Bruce Monk about the claims in this case on my own. I understand that I have been advised to receive independent legal advice before signing this opt out form and that I also have been advised that I can discuss the consequences of opting out with Class Counsel.

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Name

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Name at the time of enrollment at RWB (if different from above)

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Year(s) attended at the Royal Winnipeg Ballet School

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Address

City

---

Province

Postal Code

Telephone Number

---

Email address (optional)

---

Signature

Date

If you want to be **excluded**, mail, fax or email this form, postmarked by November 2, 2018, to:

Royal Winnipeg Ballet Class Action  
Waddell Phillips Professional Corporation  
36 Toronto Street, Unit 1120  
Toronto, Ontario M5C 2C5  
Fax: 416-477-1657  
Email: [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca)

**DO NOT SEND THIS FORM IF YOU WANT TO STAY IN THE LAWSUIT**

**QUESTIONS? Call 416-477-6979, e-mail [reception@waddellphillips.ca](mailto:reception@waddellphillips.ca),  
or visit [waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/](http://waddellphillips.ca/class-actions/royal-winnipeg-ballet-class-action/)**