

AMENDED THIS Sept 13/17 PURSUANT TO
 MODIFIÉ CE 13/09/2017 CONFORMÉMENT À
 RÈGLE 26.02
 THE ORDER OF
 LORD JUDGE OF
 L'ORDONNANCE DU
 DATED / FAIT LE 13/09/2017 AS SUPERIOR
 REGISTRAR SUPERIOR COURT OF JUSTICE
 GREFFIER COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

SARAH DOUCET and L.K.

Plaintiffs

- and -

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

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

(Notice of action issued on November 17, 2016)

1. The plaintiffs on their own behalf and on behalf of class members as defined in paragraphs 4 and 5 below (the "Student Class" and the "Family Law Class"), claim:

- (a) an order pursuant to the *Class Proceedings Act, 1992* (the "Act"), certifying this action as a class proceeding and appointing Sarah Doucet as the representative plaintiff of the Student Class and L.K. as the representative plaintiff for the Family Law Class;
- (b) an order, if required, permitting L.K. to be named by the pseudonym L.K.;

as against Bruce Monk:

- (c) damages, including aggravated damages, for Sarah and the Student Class in the amount of \$50,000,000 for:
 - i) breach of fiduciary duty, breach of confidence, breach of trust, intrusion upon seclusion, invasion of privacy and the public disclosure of private facts, breach of the *Privacy Act*, CCSM c. P125 s. 2(1), breach of the *Privacy Act*, RSBC 1996, c. 373 ss. 1, 3, breach of the *Privacy Act*, RSS 1978, c. P-24 s. 2, breach of the *Privacy Act*, RSNL 1990, c. P-22 s. 3, breach of the *Civil Code of Quebec*, SQ 1991, c. 64, art. 3, 35 - 37, negligence, and unjust enrichment arising from:

- (i) taking, or purporting to take, intimate photographic images of the plaintiff, Sarah Doucet (Sarah) and of the Student Class; and
 - (ii) the non-consensual sale and/or dissemination, and public display of these intimate images over the internet, in print form, in galleries and elsewhere; and,
- b) the torts of sexual assault, sexual exploitation and sexual violence;
- (d) special damages, including lost wages, lost earning capacity, out of pocket expenses and cost of future care suffered by the Sarah, and the Student Class in an amount to be determined, particulars of which will be provided in advance of trial;
- (e) damages for L.K. and the Family Law Class in the amount of \$10,000,000 for loss of care, guidance and companionship, and for special damages incurred by L.K. and the Family Law Class including lost wages, lost earning capacity, out of pocket expenses and cost of future care as a result of the injuries suffered by the Student Class pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3;
- (f) punitive and exemplary damages in the amount of \$25,000,000 or as fixed by the court;
- (g) a declaration that Monk owed to Sarah and the Student Class, a duty of care, a fiduciary duty and a statutory duty of care and that he breached these duties by:
 - (i) taking, or purporting to take, intimate photographic images of Sarah and the Student Class; and
 - (ii) the non-consensual sale and/or dissemination of these intimate images over the internet and elsewhere.
- (h) a declaration that Monk is liable to Sarah, L.K., the Student Class and the Family Class for damages caused or materially contributed to by the breaches of his fiduciary duty, statutory duty, and common law duty of care;
- (i) a declaration that Monk committed the tort of sexual assault, by disrobing, touching, and/or taking or purporting to take intimate photographic images Sarah and the Student Class in close physical proximity to them, and while they were in a position of vulnerability while he exercised power and authority over them;

- (j) a declaration that Monk, by taking or purporting to take intimate photographic images of Sarah and the Student Class, breached their right to privacy and committed the torts of intrusion upon seclusion and invasion of privacy, as well as breaching the *Manitoba Privacy Act*;
- (k) a declaration that Monk, by the non-consensual public display, publication in print or photographic form, selling and/or disseminating intimate images of Sarah and the Student Class, breached their right to privacy and committed the torts of intrusion upon seclusion and invasion of privacy, as well as breaching the *Manitoba, British Columbia, Saskatchewan and Newfoundland Privacy Acts* and *Civil Code of Quebec*, art. 3, 35 - 37;
- (l) a declaration that Monk, by taking or purporting to take intimate photographic images, and/or by the non-consensual public display, publication in print or photographic form, selling and/or disseminating intimate images of Sarah and the Student Class breached his fiduciary duty owed to Sarah and the Student Class, and breached the *Code of Professional Practice* of the Manitoba Teachers' Society;
- (m) a declaration that Monk, by taking or purporting to take intimate photographic images, and/or by the non-consensual public display, publication in print or photographic form, selling and/or disseminating intimate images of those Student Class members from or after April 30, 2012, breached s.1(2) of the *Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94;
- (n) a declaration that Monk has been unjustly enriched to the detriment of the Student Class and Sarah by selling their intimate photographic images over the internet and through other venues, without their knowledge or consent;
- (o) an order compelling Monk to make an accounting of all profits he has obtained from selling Sarah's and the Student Class' intimate photographic images over the internet and through other venues, and disgorgement of those profits to the Student Class and Sarah;
- (p) a permanent injunction enjoining Monk from selling, sharing, publishing, distributing or in any way disseminating any images of Sarah and the Student Class;

- (q) an order compelling Monk to identify any and all locations where he sold (or attempted to sell), shared, published, distributed or in any way disseminated images of Sarah and the Student Class;
- (r) a mandatory order requiring Monk to immediately surrender to Sarah and the Student Class and/or to destroy all images of Sarah and the Student Class that remain in his possession, power, and control; and
- (s) such further and other relief as this Honourable Court may deem just;

as against Royal Winnipeg Ballet:

- (t) a declaration that the Royal Winnipeg Ballet is vicarious liability for all the wrongful acts of Monk *vis a vis* Sarah and the Student Class, and liable for all the injuries and damages suffered by them;
- (u) a declaration that the Royal Winnipeg Ballet is vicarious liability for the injuries and damages suffered by L.K. and the Family Law Class arising from the wrongful acts of Monk *vis a vis* Sarah and the Student Class;
- (v) damages in the amount of \$50,000,000 for its negligence, breach of fiduciary, statutory and common law duties, breach of contract, and for occupier's liability in connection with its operation, management, administration, and supervision and control of the Royal Winnipeg Ballet School and, in particular, the employment, management, training and supervision of Monk, including its systemic failure to protect the interests of Sarah and the Student Class arising from creating an atmosphere where students were obliged to succumb to the demands of authority figures without recourse; and its callous disregard of, indifference to, and inaction upon being warned or notified of:
 - (i) Monk taking, or purporting to take, intimate photographic images of members of the Student Class; and
 - (ii) the non-consensual sale and/or dissemination of these intimate images.
- (w) aggravated damages in the amount of \$25,000,000 or such other amount as fixed by the court for its negligence, breach of fiduciary duty, breach of statute, breach of contract,

and occupier's liability, including its operation of the Ballet School in such a manner as to ignore the personal safety and well-being of the Student Class while on the premises;

- (x) punitive and exemplary damages in the amount of \$25,000,000 or as fixed by the court;
- (y) a declaration that the Royal Winnipeg Ballet was negligent in the operation, management, administration, supervision and control of the Royal Winnipeg Ballet School and, in particular, through its negligent employment, management, training and supervision of Monk;
- (z) a declaration that the Royal Winnipeg Ballet is liable to the plaintiff and the Student Class for its negligence in relation to the operation, management, administration, supervision and control of the Royal Winnipeg Ballet School and, in particular, its employment, management, training and supervision of Monk;
- (aa) a declaration that the Royal Winnipeg Ballet is liable to L.K. and the Family Law Class for any losses or damages that they have suffered as a result of the injuries suffered by Sarah and the Student Class arising from the wrongful acts of Monk or the Royal Winnipeg Ballet;
- (bb) a declaration that the Royal Winnipeg Ballet breached its fiduciary, statutory and common law duties to the plaintiff and the Student Class;
- (cc) a declaration that the Royal Winnipeg Ballet is liable for the breach of its fiduciary, statutory and common law duties to the plaintiff and the Student Class;

as against both Defendants:

- (dd) damages in an amount to be fixed by the Court for the costs of providing notice of certification of this action as a class proceeding, and for administering the plan of distribution of the recovery of this action;
- (ee) such further and other damages as may be incurred by Sarah, L.K., and the Class from the date hereof until the ultimate disposition of this matter, particulars of which will be provided to the defendants prior to trial;

- (ff) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues, in accordance with the plaintiffs' litigation plan or as directed by the court;
- (gg) pre-judgment and post-judgment interest compounded annually or pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (hh) costs of this action on a full indemnity basis or an amount that provides full indemnity pursuant to the *Victims' Bill of Rights* together with applicable taxes payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (ii) in the alternative, costs of this action pursuant to the *Courts of Justice Act* or, in the further alternative, on a substantial indemnity basis together with applicable taxes payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- (jj) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. The Royal Winnipeg Ballet recruits aspiring young dancers from across Canada and internationally to train under its direction, care and supervision. For 25 years, Bruce Monk was a teacher employed by the Ballet and prior to that he was a dancer employed by the Ballet. The Ballet and Monk owed a duty of care to nurture their students toward a positive career path, to educate and encourage their development, and above all else to protect them and provide them with a safe environment.

3. All of these duties were violated when Monk coerced and compelled many of the Ballet's students into undressing and posing nude or semi-nude for intimate photographs, causing them profound humiliation and fear of imminent physical and sexual violation. Monk subsequently publicly displayed, sold and distributed these intimate photographs without the students' knowledge or consent, although they had been taken in circumstances imparting an obligation on Monk's part to keep the images confidential. Monk's wrongful conduct, and the Ballet's failure and refusal to prevent or put an end to his wrongful conduct, has caused these students, and their dependants, serious and lasting harm.

The Plaintiffs

4. Sarah Doucet is a former student of the Ballet. She currently resides in the City of Toronto, in the Province of Ontario with her life partner, L.K. As a minor, Sarah attended the Royal Winnipeg Ballet School.

5. Sarah brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of students and former students of the Royal Winnipeg Ballet School (the "Student Class"), defined as:

All persons who attended the Royal Winnipeg Ballet School from 1987~~4~~ to 2015 who were photographed by Bruce Monk in a private setting.

6. L.K. is Sarah's partner. L.K. brings this action pursuant to the *Class Proceedings Act, 1992* and pursuant to the provisions of s. 61 of the *Family Law Act, R.S.O. C. F.8*, as amended, for the pecuniary and non-pecuniary damages she has suffered arising as a result of the injuries and losses sustained by Sarah. L.K. brings this action on her own behalf and on behalf of the *FLA Class*, defined as:

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 s.61*.

The Royal Winnipeg Ballet

7. As young dancers, Sarah and the members of the Student Class were taught that obedience to their teachers, even in circumstances of physical and psychological discomfort, was essential to their advancement within the Royal Winnipeg Ballet School and to their development as dancers generally. Accordingly, they were conditioned and compelled to obey directions from their teachers, including Monk, without question or protest.

8. The Royal Winnipeg Ballet ("the Ballet") is an internationally renowned dance company incorporated under the laws of Manitoba. In January 1988, the Ballet moved to state-of-the-art facilities located at 380 Graham Avenue in downtown Winnipeg. It previously operated from space on Portage Avenue (collectively, the "Ballet's facilities").

9. At all material times, the Ballet has mounted regular performances across Canada, including in Ontario. The Ballet profits from its activities and performances in Ontario, which it promotes through the use of deliberate marketing and advertising strategies in the province.

10. As part of its business, the Ballet runs the Royal Winnipeg Ballet School ("the School"), where Monk taught for approximately 25 years. The Ballet and the School are operated under the umbrella of the same corporate entity and, as such, are indivisible at law.

11. To ensure the continued enrollment of talented young dancers, the School conducts annual recruitment tours across Canada, in the course of which it rents space and holds auditions in a number of locations in Ontario. As a result, students, including members of the Student Class, were and are regularly recruited to attend the School from Ontario, a process which involves the offer and acceptance of contracts for placements at the School from within Ontario.

12. The School profits from its audition and recruitment tours by way of tuition and accommodation fees paid by students, including by members of the Student Class, from Ontario. Tuition and fees are paid pursuant to the terms of contracts.

13. It was and is an express and/or implied term of the contracts between the Ballet and the Student Class that the Ballet will safeguard the safety, security and well-being of each of its students.

Bruce Monk

14. Monk is a Canadian citizen who, to the knowledge of the plaintiff, is currently resident in the City of Victoria, in the Province of British Columbia. Monk was employed by the Ballet as a dancer, then a teacher and member of the faculty from 1987 to 2015. Prior to teaching at the School, Monk was a member of the Ballet's Company and a regular presence around the Ballet's facilities.

15. During his tenure, Monk also served as the Ballet's *de facto* in house photographer. Monk is an accomplished photographer whose images were and are frequently used in the Ballet's promotional materials, including materials published and distributed in Ontario. Monk's images were and remain integral to the Ballet's brand in Ontario and elsewhere.

Monk regularly photographed the students including the members of the Student Class during rehearsals and performances with the blessing and encouragement of the Ballet, in furtherance of the Ballet's own interests. Students thus became accustomed to seeing Monk with camera in hand and to having him take their photographs in his capacity as an employee of the Ballet. Neither the Ballet nor Monk ever sought or received consent from Sarah or the members of the

Student Class before they were photographed in this way. Sarah and the Student Class were lead to believe that they had no right to object to having their images taken by Monk and exploited by the Ballet.

THE DEFENDANTS' WRONGFUL CONDUCT

The taking of intimate photographic images

16. At all materials times Sarah was a day student of the School's General Division, which she attended until the age of 18. During this period, Sarah also attended a number of summer camp programs run by the School until the age of 19, including the Professional Division summer camp, on the University of Manitoba's campus.

17. As a long-time student of the School, Sarah was familiar with Monk, who had danced as a member of the Ballet's Company before becoming a teacher at the School. In addition, with the Ballet's blessing and encouragement, Monk regularly photographed the members of the Student Class during classes, rehearsals, performances, and other day-to-day activities around the Ballet's facilities.

18. When Sarah was approximately 16 or 17 years old, she began to plan for the next stages of her dance career. As it was common knowledge at the Ballet that Monk would take head shots for students, Sarah approached him to take photographs for her portfolio.

19. Monk arranged to meet Sarah at the Ballet's facilities on a Sunday, when the building would be relatively empty and he could photograph her unsupervised. In his capacity as an employee of the Ballet, Monk was granted unfettered and unsupervised access to various spaces owned and occupied by the Ballet, including studios, classrooms, offices, performance spaces, storage rooms and the boiler room in the basement at the Ballet School.

20. The photo session began in a dance studio, where Monk took photos of Sarah performing various dance steps. Thereafter, at Monk's suggestion, they moved to a private office on the third floor.

21. Inside the tiny office, Monk resumed photographing Sarah. He soon complained that the straps of her bodysuit were ruining her neckline and coerced her into removing the top half of the bodysuit, so that her torso was naked. Although Sarah was reluctant and embarrassed, Monk was insistent, and used his position of authority as well as his intimidating physical

presence over Sarah to bend her to his will. Sarah obeyed as the Ballet had taught her, and Monk proceeded to photograph her with her top removed. For the duration of the photoshoot, Sarah was anxious and afraid that Monk was about to touch her in a sexual, non-consensual and invasive way.

22. Afterwards, Sarah was embarrassed, humiliated and overwhelmed by a deep sense of personal violation. Scared of what Monk would do with the photos if she complained, Sarah told no one and attempted to carry on with life as "normal". She left the Ballet School soon thereafter.

23. Using his authority as an employee of the Ballet, Monk similarly cajoled and coerced the members of the Student Class into posing nude or semi-nude for photographs. During these photo sessions, which occurred on the Ballet's facilities as well as at off-site premises controlled by Monk, the members of the Student Class feared imminent, non-consensual sexual contact from Monk.

24. Over the years, as the Ballet took no steps to stop Monk from photographing the Student Class in private and in nude or semi-nude states, Monk became increasingly emboldened, and the photographs progressed to becoming increasingly pornographic.

The distribution and sale of the intimate images

25. Over the many years he was employed by the Ballet, Monk amassed a substantial cache of thousands of intimate images as a result of his sexual misconduct towards Sarah and the members of the Student Class (the "intimate images"). Through various means, the full details of which have yet to be determined, Monk publicly displayed, published, distributed, transmitted, sold and/or made available (collectively, "distributed") some or all of the intimate images without the knowledge or consent of the plaintiff or the members of the Student Class.

26. Among other means, Monk offered copies of these intimate images for sale over the internet through various ecommerce (e.g., eBay and Worthpoint, where he used the avatar "paperboy46") to purchasers across the country, including in Ontario. Residents of Ontario were able to, and did, access and view the intimate images from Ontario. Further, residents of Ontario were able to, and did, purchase and receive copies of the intimate images in Ontario.

27. The distribution and sale of the intimate images has occurred continuously for many years, until at least 2015-up until the present day. Throughout, Monk pursued and facilitated the

distribution of the images of the Student Class for his personal and pecuniary gain and without the consent of the Student Class. Monk acted with callous disregard to the fiduciary duty that he owed to the Student Class, using their images as a means to satisfy his personal sexual and financial interests and ends.

28. Upon learning of Monk's wrongful conduct in distributing and selling their images over the internet and elsewhere, Sarah and the Student Class suffered immediate emotional and psychological harm from the reasonable apprehension that their personal images may have been among the intimate images that Monk distributed and sold. The sense of humiliation, anguish and violation was acute and is ongoing, as Sarah and the Student Class are powerless to know who has viewed and continues to view the intimate images and how many copies of these images remain in circulation. They are also powerless to prevent the ongoing viewing and distribution of these images.

29. In April 2015, an article published in MacLean's magazine described Monk's wrongful conduct while employed by the Ballet. This article alerted many members of the Student Class to the fact that Monk may have sold and/or distributed their intimate images for profit, resulting in the harm described above.

30. As a result of his gross misconduct, Monk is the subject of an ongoing criminal investigation by the Winnipeg Police Service and a concurrent investigation by Manitoba Child and Family Services. After an internal investigation, Monk was dismissed by the Ballet in the spring of 2015.

LIABILITY OF BRUCE MONK

31. As an adult, teacher, and employee of the Ballet, Monk enjoyed a special position of power, authority, and trust vis-à-vis Sarah and the Student Class, all of whom were minors when they first met Monk as well as students over whom he exercised special power and control. At all material times, Monk owed Sarah and the Student Class a duty of care and a fiduciary duty to act in their best interests and not abuse his dominant position in relation to them, nor exploit their vulnerabilities or dependency on him, nor betray the trust they reposed in him, nor otherwise act disloyally towards them by placing his own selfish interests ahead of theirs.

32. By coercing and compelling Sarah and the Student Class into undressing and posing nude or semi-nude for him, and by subsequently publicly displaying, publishing, distributing, transmitting and/or making available the intimate images for his own personal and pecuniary gain, Monk breached his fiduciary duty as well as the duty of care that he owed to Sarah and the Student Class, causing them harm. As such, Monk is liable to Sarah and the Student Class for negligence and breach of fiduciary duty.

33. Further, by either physically removing clothing, touching or looming in close physical proximity to Sarah and the members of the Student Class after coercing them into undressing while alone with him, thus causing Monk caused them to reasonably apprehend that he was about to touch them in a sexual, non-consensual and invasive way, and accordingly, Monk committed the tort of sexual assault.

34. Sarah and the members of the Student Class trusted Monk and approached him to take their photographs, or consented to his requests that they pose for him with the reasonable expectation that Monk would keep the images private and confidential. Monk assured Sarah and the Student Class that the nude and semi-nude images would be kept private and would not be shared. As such, Monk had a duty to keep their confidence and to refrain from showing or sharing the intimate images with anyone without the prior explicit consent of Sarah and the Student Class. By publicly displaying, publishing, distributing, transmitting, selling and/or making available the intimate images, without their consent, thus causing Monk caused Sarah and the Student Class psychological, emotional and physical harm, and accordingly Monk committed the tort of breach of confidence.

35. Alternatively, Monk's actions in this regard constituted an invasion of privacy through the public sharing of private facts, as well as a violation of the *Privacy Acts* of Manitoba, British Columbia, Saskatchewan and Newfoundland, and the *Criminal Code*. Monk intentionally published, distributed, transmitted, sold and/or made available the intimate images by various means, including over the internet, thus invading Sarah's private affairs and the private affairs of the other members of the Student Class. His conduct in this regard served no legitimate concern to the public. It was flagrant and outrageous, and is highly offensive to a reasonable person. Monk knew or ought to have known that the distribution of the intimate images would result in harm to Sarah and the Student Class. Heedless of the harm he would cause to Sarah and the Student Class as well as L.K. and the Family Law Class, Monk distributed the intimate images in pursuit of his own personal and pecuniary gain.

LIABILITY OF THE ROYAL WINNIPEG BALLET

36. At all material times, the Ballet owed special, elevated duties to the students attending the School, pursuant to which it was obligated to take all reasonable steps to safeguard their welfare, safety and well-being. As such, at all material times the Ballet owed Sarah and the other members of the Student Class a duty of care and a fiduciary duty to protect them from Monk's wrongful conduct.

37. By employing Monk and permitting him to regularly photograph the School's students, the Ballet vested Monk with power and authority over Sarah and the members of the Student Class. As such, the Ballet placed Monk in a position that enabled him to engender the trust and compel the obedience of the School's students, including Sarah and the Student Class.

38. As the relationship between Monk and the Ballet was sufficiently close, and Monk's wrongful conduct was sufficiently connected to conduct authorized or condoned by the Ballet, the Ballet is vicariously liable for Monk's breach of his fiduciary duty towards Sarah and the Student Class, as well as for Monk's sexual assaults and other tortious conduct. The Ballet is also vicariously liable for Monk's distribution of the intimate images, which Monk was only able to acquire as a result of the power and authority vested in him by the Ballet.

39. In addition, the Ballet is directly liable to Sarah and the Student Class in negligence, breach of fiduciary duty, occupiers' liability and breach of contract. It was an explicit and/or implied term of their agreement to attend the School that the School would take all reasonable steps to safeguard their safety, security and well-being while attending the School.

40. As students of the School, Sarah and the Student Class were vulnerable to Monk's abuse of authority, and any related coercion and exploitation. As a result of complaints made by members of the Student Class or their guardians to Monk, other teachers or members of the School's administration, broadly circulated rumors that came to the attention of School staff, the fact that members of the Student Class subsequently became members of the School staff, and Monk's own flagrant conduct, the Ballet knew or ought to have known that Monk was abusing his power and authority to acquire intimate images of its students. As a result of the Ballet's negligence, wilful blindness, breach of its duties under the Manitoba *Occupiers' Liability Act* and breach of contract, Monk was able to acquire a cache of thousands of intimate images which he subsequently displayed publicly, published, distributed and sold for profit, thus aggravating the

plaintiff's and the Class' historic harms and causing them fresh harm, including psychological, emotional and physical injury.

41. The Ballet owed Sarah and the Student Class a duty of care and a fiduciary duty to protect them from foreseeable harm and injury caused by personnel employed by the Ballet assaulting, intimidating or abusing the students. Further, the Ballet had a duty to act loyally and never put its own interests ahead of the interests of Sarah and the Student Class. By employing Monk and continuing to employ Monk when they knew, ought to have known or were wilfully blind to his wrongful acts, the Ballet breached these duties and is therefore liable to Sarah and the Student Class. Particulars of these breaches include:

- (a) failing to conduct any, or adequate, investigations into complaints that Monk had engaged in inappropriate conduct, towards students of the School, including taking intimate images of the Student Class;
- (b) failing to implement any, or adequate, consequences or discipline to Monk upon discovering that he had engaged in inappropriate conduct towards students of the School, including taking intimate images of Sarah and the Student Class;
- (c) failing to implement any, or adequate, screening systems to determine and ensure the appropriateness of its employees, including Monk;
- (d) failing to adequately train, supervise, and counsel its employees, including Monk;
- (e) failing to implement any, or adequate, guidelines or directives about the importance of maintaining proper boundaries between teachers and students, including Sarah and the Student Class;
- (f) failing to investigate and monitor on an ongoing basis the suitability of its employees, including Monk, and to take necessary or sufficient steps to detect, prevent, or stop all inappropriate conduct by Monk towards students of the School, including the plaintiff and the Student Class; and
- (g) failing to implement any, or adequate, mechanisms to enable students, including Sarah and the Student Class, to come forward with complaints relating to the conduct of its employees, including Monk.

At all material times, the Ballet owned and/or had physical control over the Ballet's facilities. As such, it was responsible for the safety and condition of the premises, including the acts of individuals permitted to use the premises, and owed an affirmative duty of care to ensure that entrants and users of the premises, including Sarah and the Student Class, were safe. By failing to take reasonable steps to ensure the safety and security of the Ballet's facilities for Sarah and the Student Class, the Ballet breached its duty in this regard including the *Manitoba Occupiers' Liability Act*. Consequently, the Ballet is liable to Sarah and the Student Class for any harms and injuries arising from Monk's misconduct at the Ballet's facilities.

DAMAGES

42. As a result of the defendants' wrongful conduct pleaded herein, Sarah and the Student Class have suffered and/or continue to suffer the following harms and injuries, which have caused or materially contributed to their ongoing pain, suffering and loss of enjoyment of life:

- (a) emotional, physical and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) intense anguish, humiliation, shame and self-blame;
- (d) chronic anxiety, as well as profound and occasionally overwhelming depression;
- (e) suicidal ideation and other self-injuring behaviour;
- (f) post-traumatic stress disorder or symptoms analogous to post-traumatic stress disorder, including panic attacks;
- (g) profound issues with trust and authority figures, which have created difficulty in their interpersonal relationships and employment;
- (h) alcohol and substance abuse;
- (i) difficulties engaging in intimate sexual relationships;
- (j) difficulties with emotional regulation;
- (k) eating disorders, and difficulties with body-image;

- (l) recurrent nightmares, night terrors, and sleep disturbances;
- (m) difficulties with memory, concentration, and clear thinking;
- (n) intense flashbacks;
- (o) a general loss of enjoyment of life; and
- (p) such further and other harms and injuries as shall be discovered and/or particularized.

43. As a result of these harms and injuries, Sarah and the Student Class have required and/or will require ongoing therapy, counselling and treatment. They claim the cost of both past and future therapy, counselling and treatment, as well as any other expenses arising from the defendants' wrongful conduct.

44. As a result of the harms and injuries suffered by Sarah and the Student Class, L.K. and the Family Law Class have suffered loss of care, guidance and companionship of Sarah and the Student Class. They also required and or will require ongoing therapy, counselling and treatment. They claim the cost of both past and future therapy, counselling and treatment, as well as any other out of pocket expenses and loss of income arising from the defendants' wrongful conduct.

45. As a result of the defendants' wrongful conduct, the plaintiff and the Student Class never reached their true academic or vocational potential, and/or experienced a delay of entry into the workforce and/or have further experienced a disrupted and unstable employment history. The plaintiff and the Student Class have therefore suffered economic loss in the form of lost income, lost economic opportunity, and loss of competitive advantage.

46. In caring for Sarah and the Student Class for the harms and injuries they have suffered, L.K. and the Family Law Class have suffered and will suffer loss of income, lost economic opportunity and loss of competitive advantage.

47. The defendants are jointly and severally liable for the damages which they caused or materially contributed to in respect of the plaintiff and the Student Class.

PUNITIVE and AGGRAVATED DAMAGES

48. The selfish, high-handed and callous conduct of the defendants warrants condemnation of the court through awards of both aggravated and punitive damages.

49. The prolonged, intrusive and exploitative nature of the mistreatment to which Sarah and the Student Class were subject at the hands of Monk, who showed no regard for their bodily integrity or emotional wellbeing, represented a willful betrayal of their trust and vulnerabilities and was of such a serious nature as to justify an award of both aggravated and punitive damages against Monk.

50. In addition to being vicariously liable for the aggravated damages caused by Monk, an award of aggravated and punitive damages is justified against the Ballet in its own right, given its actual or constructive knowledge of the risk of harm and injury which Monk presented to the plaintiff and the Student Class, its complicity and/or willful blindness towards Monk's ongoing wrongdoing, and its failure to prevent and/or mitigate the effects of this wrong-doing through appropriate and timely investigations, interventions, and/or support.

51. The defendants are jointly and severally liable for the punitive and aggravated damages owed to Sarah and the Student Class for the prolonged and abhorrent nature of their collective actions, including their callous disregard for the personal privacy and mental health and well-being of the Students, putting their own personal interests ahead of those of the Students.

STATUTES RELIED UPON

52. The plaintiff and the Student Class plead and rely upon:

- (a) the *Privacy Act*, CCSM c. P125;
- (b) the *Privacy Act*, RSBC 1996, c. 373;
- (c) the *Privacy Act*, RSS 1978 c. P-24;
- (d) the *Privacy Act*, RSNL 1990 c. P-22;
- (e) the *Civil Code of Quebec*, SQ 1991, c. 64 art. 3, 35 – 37;
- (f) The *Occupiers' Liability Act*, CCSM, c. 08

- (g) the *Negligence Act*, R.S.O. 1990, c. N.1;
- (h) the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as amended;
- (i) the *Victims' Bill of Rights, 1995*, S.O. 1995, c. 6;
- (j) the *Canadian Victims Bill of Rights*, S.C. 2015, c. 13;
- (k) the *Protecting Canadians from Online Crime Act*, S.C. 2014, c. 31; and
- (l) the *Criminal Code*, R.S.C., 1985, c. C-46.

SERVICE EX JURIS

53. This action has a real and substantial connection to Ontario. This proposed class proceeding consists of claims:

- (a) in respect of contracts made in Ontario between the Royal Winnipeg Ballet, or the School, or both and the members of the Student Class (Rule 17.02(f)(i), *Rules of Civil Procedure*);
- (b) in respect of torts committed in Ontario as a result of the distribution and sale of the intimate images over the internet, including in Ontario (Rule 17.02(g), *Rules of Civil Procedure*); and
- (c) brought against a corporation, the Royal Winnipeg Ballet, which carries on business in Ontario by way of deliberate marketing and advertising campaigns, frequent performance tours, audition tours, and recruitment tours (Rule 17.02(p), *Rules of Civil Procedure*).

54. The Plaintiffs propose that this action be tried in Toronto, Ontario.

December 19, 2016

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Doucet v. The Royal Winnipeg Ballet et al.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO
under the *Class Proceedings Act, 1992*

~~FRASER~~ **AMENDED**
STATEMENT OF CLAIM

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