

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF LONGUEUIL

SUPERIOR COURT
(Class Action)

N° : 505-06-000023-205

STÉPHANIE BERNARD
-and-
PIERRE-ANDRÉ FOURNIER

Petitioners

v.

COLLÈGE CHARLES-LEMOYNE DE
LONGUEUIL INC. ET ALS.

Respondents

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE OF THE
SCHOOLS REPRESENTED BY BORDEN LADNER GERVAIS LLP¹
(THE “SCHOOLS”)
(Article 574(3) C.C.P.)**

**TO THE HONOURABLE PIERRE-C. GAGNON, J.S.C., APPOINTED CASE MANAGEMENT
JUDGE IN THIS CLASS ACTION, THE SCHOOLS RESPECTFULLY SUBMIT:**

I. OVERVIEW AND FACTS

1. On July 6, 2020, the Petitioners filed a motion for authorization of a class action against over 120 private educational institutions (the “**Respondents**”) on behalf of the following putative class:

All persons who are parties to a contract with one of the Defendant Schools and paid tuition fees for full-time, in-person education services at the elementary or secondary level with a general curriculum.

2. The Petitioners have two children who attended primary school at the Collège Charles-Lemoyne in Longueuil (the “**College**”) during the 2019-2020 academic year pursuant to an education services contract;
3. On March 13, 2020, the Québec government issued Order 177-2020 instructing all schools to suspend in-person teaching and educational services. The Québec government ultimately maintained the closure of schools in the Montreal Metropolitan area until the end of the 2019-2020 school year;
4. Sometime after March 13, 2020, the College allegedly started offering distance classes and short educational videos online. The Petitioners complain that these educational services vastly differed in quantity and quality, from in-class learning, and did not include supervision and day care services;

¹ The schools represented by Borden Ladner Gervais, LLP, are listed in **Schedule I**. These schools are independent from one another.

5. The Petitioners seek to institute a class action against the Respondents, essentially claiming that:
 - (a) the Québec government's forced school closures as of March 13, 2020, was a *superior force* event, which altogether prevented the Respondents from providing full-time, in-person educational services to students as agreed in the applicable educational services contracts and that, accordingly, class members are entitled to restitution in proportion to certain contractual obligations that have not been executed;
 - (b) Respondents breached their contractual obligations by not providing full-time, in-person educational services to students, as well as other additional and related services, because they did not provide the services pursuant to the applicable educational services contract;
6. Petitioners assert that the class members' educational services contracts with the schools are consumer contracts and contracts of adhesion, and seek a wide breadth of remedies;

II. THE PROPOSED RELEVANT EVIDENCE

7. In support of the contestation of the motion for authorization, the Schools seek to adduce relevant evidence in the form of affidavits signed by each of the Schools², which provide:
 - (a) an overview of each School's mission;
 - (b) a brief account of each School's response to the mandatory school closures ordered by the Québec government on March 13, 2020, and the remote learning services, extracurricular activities, and support resources provided thereafter;
 - (c) an overview of each School's educational services contract for the 2019-2020 academic year;
 - (d) student success and graduation rates at the end of the 2019-2020 academic year;
8. These aforementioned affidavits, which provide a concise account of each School's particular and customized response to the mandatory closure of schools ordered on March 13, 2020, are essential and necessary for the Schools to demonstrate that the Petitioners' allegations in regards to the Schools are incorrect, as well to provide the Court with a more complete picture of each Schools' contractual obligations and the manner in which they satisfied those obligations;
9. The Schools submit that this evidence is essential and necessary to the Court's determination of whether the Petitioners' proposed class action meets the criteria in article 575 C.C.P., including:

² The description of each of these affidavits is provided in **Schedule II**.

- (a) whether the Petitioners have demonstrated an arguable case in support of their proposed class action (article 575(2) C.C.P.), namely in regards to the Schools' contractual liability;
- (b) whether the Petitioners have demonstrated the existence of common questions of fact and law (article 575(1) C.C.P.), especially considering each of the Schools' particular response; and
- (c) whether the Petitioners have demonstrated that there is a class (article 575(1) and (3) C.C.P.), and whether the class action is the appropriate procedure in this case;

III. CONCLUSION

- 10. The Schools' proposed relevant evidence is essential and necessary for the Court to have a full picture of the contractual relationship between Schools and parents, to demonstrate that the Petitioners' allegations (namely that the Schools failed to fulfill their contractual obligations during the health crisis) are incorrect, and to demonstrate that the class action is not the right procedure in this case, all of which will assist the Court in assessing whether the Petitioners have satisfied the authorization criteria of article 575 CCP;
- 11. For these reasons, the Schools seek leave from this Court to adduce the above stated documents as relevant evidence;

THEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for Leave to Adduce Relevant Evidence* of the Schools listed in **Schedule I**;

AUTHORIZE the Schools listed in **Schedule I** to each file into the Court record their affidavits and the exhibits in support thereof, described in **Schedule II**;

THE WHOLE, costs to follow.

Montreal, January 12, 2021

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TAKE NOTICE that the present *Application for Leave to Adduce Relevant Evidence* will be presented for adjudication before the Honourable Justice Pierre-C. Gagnon of the Superior Court of Québec at a time and in a room to be determined by him, at the Longueuil Courthouse located at 1111, Jacques-Cartier Blvd. East, Longueuil, Québec, J4M 2J6.

Do govern yourselves accordingly.

Montreal, January 12, 2021

Borden Ladner Gervais

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SCHEDULE I
List of Schools represented by Borden Ladner Gervais LLP

DF023	Alexander Von Humboldt École Internationale Allemande inc.
DF033	Collège de l'Ouest de l'Île inc.
DF061	Collège Trafalgar pour filles
DF070	Société des Religieuses de Notre-Dame de Sion
DF074	École Chrétienne Emmanuel
DF088	École Miss Edgar et Miss Cramp
DF097	The Priory School inc.
DF102	École Secondaire Loyola
DF103	Selwyn House Association
DF113	L'Académie Centennial
DF117	L'École Sacré-Cœur de Montréal
DF118	L'École St-Georges de Montréal inc.
DF119	Lower Canada College
DF124	The Study Corporation

SCHEDULE II
Description of Affidavits and Supporting Exhibits

- R-DF023** Alexander Von Humboldt École Internationale Allemande inc., Affidavit of Martin Braun dated January 8, 2021 and exhibits in support thereof
- R-DF033** Collège de l'Ouest de l'Île inc., Affidavit of Lise Lafontaine dated January 8, 2021 and exhibits in support thereof
- R-DF061** Collège Trafalgar pour filles, Affidavit of Katherine Nikidis dated January 11, 2021 and exhibits in support thereof
- R-DF070** Société des Religieuses de Notre-Dame de Sion, Affidavit of Lisa Dubuc dated January 12, 2021 and exhibits in support thereof
- R-DF074** École Chrétienne Emmanuel, Affidavit of Jean-Obed Jubuisson dated January 11, 2021 and exhibits in support thereof
- R-DF088** École Miss Edgar et Miss Cramp, Affidavit of Lauren Aslin dated January 11, 2021 and exhibits in support thereof
- R-DF097** The Priory School inc., Affidavit of Christian St-Pierre dated January 11, 2021 and exhibits in support thereof
- R-DF102** École Secondaire Loyola, Affidavit of Tom Malone dated January 8, 2021 and exhibits in support thereof
- R-DF103** Selwyn House Association, Affidavit of Michael Downey dated January 11, 2021 and exhibits in support thereof
- R-DF113** L'Académie Centennial, Affidavit of Angela Burgos dated January 11, 2021 and exhibits in support thereof
- R-DF117** L'École Sacré-Cœur de Montréal, Affidavit of Shawn O'Donnell dated January 8, 2021 and exhibits in support thereof
- R-DF118** L'École St-Georges de Montréal inc., Affidavit of Nathalie Bossé dated January 8, 2021 and exhibits in support thereof
- R-DF119** Lower Canada College, Affidavit of Geoffrey Kalil dated January 11, 2021 and exhibits in support thereof
- R-DF124** The Study Corporation, Affidavit of Nancy Lewis Sweer dated January 11, 2021 and exhibits in support thereof

SUPERIOR COURT
(Class Action)

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(art. 574(3) C.C.P.)**

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