

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

Borden Ladner Gervais

Borden Ladner Gervais LLP
Lawyers for the Schools listed in **Schedule I**

Mtre Anne Merminod
Mtre Patrick Trent
1000 De La Gauchetière Street West, Suite 900
Montréal, QC H3B 5H4
Tel. : 514.954.2529 (AME) / 514.954.3154 (PT)
Fax : 514.954.1905
Emails : amerminood@blg.com / ptrent@blg.com

NOTICE OF PRESENTATION

TO: Mtre. Jérémie John Martin
Mtre. Sébastien A. Paquette
CHAMPLAIN LAWYERS
1434, Sainte-Catherine West
Suite 200
Montréal, Québec, H3G 1R4
martin@champlainavocats.com
spaguetta@champlainavocats.com
514.866.3636
514.944-7344

Lawyers for Petitioners

Mtre. Vincent de l'Étoile
Mtre. Yann Bernard
Mtre. Elisabeth Neelin
LANGLOIS LAWYERS
1250 René-Lévesque Blvd. West
20th Floor
Montréal, Québec, H3B 4W8
vincent.deletoile@langlois.ca
yann.bernard@langlois.ca
elisabeth.neelin@langlois.ca
514.282.7808

Lawyers for Respondents
COLLÈGE CHARLES-LEMOYNE LONGUEUIL INC.,
L'ÉGLISE ADVENTISTE DU SEPTIÈME
JOUR-FÉDÉRATION DU QUÉBEC, ACADÉMIE
CHRÉTIENNE RIVE NORD INC., ACADÉMIE
CULTURELLE DE LAVAL, ACADÉMIE DES
SACRÉS-CŒURS, ACADÉMIE FRANÇOIS-LABELLE,
ACADÉMIE JUILLET S.A., ACADÉMIE KUPER INC.,
ACADÉMIE LAVALLOISE, ACADÉMIE LOUIS-PASTEUR,
ACADÉMIE MARIE-CLAIRE, ACADÉMIE MARIE
LAURIER INC., ACADÉMIE MICHÈLE-PROVOST INC.,
L'ACADÉMIE STE-THÉRÈSE INC., ACADÉMIE ST-
MARGARET INC., CENTRE ACADÉMIQUE DE
LANAUDIÈRE, CENTRE ACADÉMIQUE FOURNIER INC.,
CENTRE D'INTÉGRATION SCOLAIRE INC., CENTRE
FRANÇOIS MICHELLE, COLLÈGE BEAUBOIS,
COLLÈGE BOISBRIAND 2016, COLLÈGE
CHARLEMAGNE INC., COLLÈGE CITOYEN, COLLÈGE
D'ANJOU INC., COLLÈGE DE MONTRÉAL, COLLÈGE
DUROCHER SAINT-LAMBERT, LE COLLÈGE
FRANÇAIS PRIMAIRE INC., LE COLLÈGE FRANÇAIS
(1965) INC., COLLÈGE HÉRITAGE DE CHÂTEAUGUAY
INC., COLLÈGE INTERNATIONAL MARIE DE FRANCE,
COLLÈGE JACQUES-PRÉVERT, LA CORPORATION DU
COLLÈGE JEAN-DE-BRÉBEUF, COLLÈGE
JEAN-ÉUDES INC., COLLÈGE LAVAL, COLLÈGE
LETENDRE, COLLÈGE DE MONT-ROYAL, LE
COLLÈGE MONT ST-LOUIS, ASSOCIATION
COOPÉRATIVE, COLLÈGE NOTRE-DAME, COLLÈGE
NOTRE-DAME-DE-LOURDES, ÉCOLE PASTEUR
S.S.B.L., COLLÈGE REGINA ASSUMPTA (1995),
COLLÈGE REINE-MARIE, COLLÈGE SAINTE-ANNE,
COLLÈGE STE-MARCELLINE, COLLÈGE ST-HILAIRE
INC., COLLÈGE SAINT-PAUL, COLLÈGE
SAINT-SACREMENT, COLLÈGE ST-JEAN-VIANNEY,
COLLÈGE TRINITÉ, COLLÈGE VILLE MARIE, ÉCOLE

ARMEN-QUÉBEC DE L'UNION GÉNÉRALE ARMÉNIENNE DE BIENFAISANCE, ÉCOLE AUGUSTIN ROSCELLI, ÉCOLE AU JARDIN BLEU INC., ÉCOLE CHARLES-PERRAULT (LAVAL), ÉCOLE CHARLES-PERRAULT (PIERREFONDS), INSTITUT D'ENSEIGNEMENT DAR AL IMAN, ÉCOLE PRIMAIRE JMC INC., ASSOCIATION LE SAVOIR, ÉCOLE LE SOMMET, ÉCOLES LES TROIS SAISONS INC., ÉCOLE LUCIEN-GUILBAULT INC., ÉCOLE MARIE-CLARAC, ÉCOLE MARIE GIBEAU INC., 9208-6511 QUÉBEC INC. (ÉCOLE MONTESSORI DE LAVAL), 133825 CANADA INC. (ÉCOLE MONTESSORI MONTREAL), ÉCOLE MONTESSORI INTERNATIONAL BLAINVILLE INC., ÉCOLE MONTESSORI INTERNATIONAL MONTRÉAL INC., ÉCOLE NOTRE DAME DE NAREG, ÉCOLE SAINTE-ANNE, ÉCOLE ST-JOSEPH (1985) INC., MONTRÉAL MOSQUE, COMMUNAUTÉ HELLÉNIQUE DU GRAND MONTRÉAL, ÉCOLE VISION TERREBONNE 2007, ÉCOLE TRILINGUE VISION VARENNES, ÉCOLE VANGUARD QUÉBEC LIMITÉE, ÉDU2, EXTERNAT MONT-JÉSUS-MARIE, EXTERNAT SACRÉ-CŒUR, L'ÉCOLE ARMÉNIENNE SOURP HAGOP, L'ÉCOLE DES PREMIÈRES LETTRES, PENSIONNAT DU SAINT-NOM-DE-MARIE, PENSIONNAT NOTRE-DAME-DES-ANGES, VILLA-MARIA, VILLA SAINTE-MARCELLINE

Mtre. Eric Azran
STIKEMAN ELLIOTT
1155 René-Lévesque Blvd West
41st Floor
Montréal, Québec, H3B 3V2
eazran@stikeman.com
514.397.3169

Mtre. Joey Zukran
LPC LAWYER INC.
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
jkukran@lpclex.com
514.379.1572

Mtre. Jean El-Masri
EL-MASRI LAWYER INC.
4 Notre-Dame Street East, Suite 750
Montréal, Québec, H2Y 1B8
elmasri@elmasri-avocat.com
514.499.7575

Lawyers for Respondents
ACADÉMIE BLAISE PASCAL INC., ACADÉMIE SOLOMON SCHECHTER, ACADÉMIE YESHIVA YAVNÉ, L'ÉCOLE AKIVA, ÉCOLE BETH JACOB DE RAV HIRSCHPRUNG, ÉCOLE DE FORMATION HÉBRAÏQUE DE LA CONGRÉGATION BETH TIKVAH, ACADÉMIE HÉBRAÏQUE INC., ÉCOLE MAIMONIDE, UNITED TALMUD TORAHS OF MONTREAL INC., LES ÉCOLES JUIVES POPULAIRES ET LES ÉCOLES PERETZ INC.

Lawyers for Respondent
L'ACADÉMIE BETH RIVKAH POUR FILLES

Lawyers for Respondents
ÉCOLE COMMUNAUTAIRE BELZ, SÉMINAIRE BNOT JÉRUSALEM, ÉCOLE PRIMAIRE MESIFTA DU CANADA

Mtre. Marie-Andrée Mallette
Marie-Andrée Mallette, lawyer
1426 Route 132
Saint-Anicet, Québec, J0S 1M0
marieandreemallette@videotron.ca
514.594.1358

Lawyers for Respondent
ÉCOLE LA NOUVELLE VAGUE

Mtre. Éric Vallières
Mtre. Mirna Kaddis
MCMILLAN LLP
1000 Sherbrooke Street West
Suite 2700
Montréal, Québec, H3A 3G4
eric.vallieres@mcmillan.ca
mirna.kaddis@mcmillan.ca
514.987.5068 / 514.987.5049

Lawyers for Respondent
ÉCOLE BUISSONNIÈRE, CENTRE DE FORMATION
ARTISTIQUE INC.

Mtre. Laurence Ste-Marie
Mtre. Richard Vachon
WOODS LLP
2000 McGill College Ave., Suite 1700
Montréal, Québec, H3A 3H3
lstemarie@woods.qc.ca
rvachon@woods.qc.ca
514.982.5625
514.982.6103

Lawyers for Respondent
Jean de la Mennais

Mtre. Bernard Larocque
Mtre. Laurence Bich-Carrière
LAVERY DE BILLY
1, Place Ville Marie, Suite 4000
Montréal, Québec, H3B 4M4
blarocque@lavery.ca
lbichcarriere@lavery.ca
514.871.8977
514.877.2937

Lawyers for Respondent
COLLÈGE STANISLAS INCORPORÉ

Mtre. Michael Heller
HELLER AND ASSOCIATES
425 Saint-Sulpice
Montréal, Québec, H2Y 2V7
michael@meheller.com
514.288.5252

Lawyers for Respondent
ACADÉMIE KELLS INC.

Mtre. Dominic Bianco
MERCADANTE DI PACE
5450 Jarry Street East, Suite 202
Saint-Léonard, Québec, H1P 1T9
dbianco@mercadante.ca
514.326.3300

Lawyers for Respondents
ACADÉMIE ÉTOILE DU NORD LAVAL AND COLLÈGE
PREP INC.

Mtre. Normand D. Pepin
NORMAND PEPIN, LAWYER
100 Berlioz Street
Suite 502
Verdun, Québec, H3E 1N4
normandpepin@bellnet.ca
514.768.5419

Lawyers for Respondent
ÉCOLE ALI IBN ABI TALIB

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

Borden Ladner Gervais LLP

Lawyers for the Schools listed in **Schedule I**

Mtre Anne Merminod

Mtre Patrick Trent

1000 De La Gauchetière Street West, Suite 900

Montréal, QC H3B 5H4

Tel. : 514.954.2529 (AME) / 514.954.3154 (PT)

Fax : 514.954.1905

Emails : amerminod@blg.com / ptrent@blg.com

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)

DISTRICT OF LONGUEUIL
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 LLP
(art. 574(3) C.C.P.)**

ORIGINAL

BLG
Borden Ladner Gervais
B.M. 2545

1000, rue De La Gauchetière Ouest
Bureau 900
Montréal, QC, Canada H3B 5H4
Téléphone : 514.879.1212
Télécopieur : 514.954.1905
amerminod@blg.com
ptrent@blg.com

Me Anne Merminod / Me Patrick Trent
Dossier : 296173.000002