

CANADA

PROVINCE OF QUEBEC
DISTRICT OF Montreal

N°: 500-09-029118-205

N°: 500-06-000904-181

COURT OF APPEAL

MARC BOUDREAU, having elected his domicile at the office of attorney Alan M. Stein, 4 Westmount Square, Suite 150, Westmount, Quebec, H3Z 2P9

and

N.P., having elected her domicile at the office of attorney Alan M. Stein, 4 Westmount Square, Suite 150, Westmount, Quebec, H3Z 2P9

APPELLANTS - *Petitioners*

v.

THE ATTORNEY GENERAL OF QUEBEC, having an office at Complex Guy Favreau, 200 René-Lévesque Blvd. West, East Tower, 9th Floor, Montréal, Québec, H2Z 1X4

and

THE SISTERS OF PROVIDENCE, having an office at 12055 rue Grenet, Montréal, Québec, H4J 2J5.

and

LES SOEURS DE MISERICORDE DE MONTREAL, having an office at 12435 av. De la Misericorde, Montréal, Québec, H4J 2G3

and

THE GREY NUNS OF MONTREAL, having an office at 138 rue Saint-Pierre, Montréal, Québec, H2Y 2L7

and

SOEURS DE LA CHARITE DE QUEBEC,
having an office at 2655 rue Pelletier,
Québec, Québec, G1C 3X7

and

LES SOEURS DOMINICAINES DE LA TRINITE, having an office at 1465 Boul du Carmel, Trois Rivières, Québec, G8Z 3R7

and

CONGREGATION DES SOEURS DE NOTRE-DAME AUXILIATRICE, having an office at 895 rue Perreault E, Rouyn-Noranda, Québec, J9X 5H5

and

LES SOEURS DU BON-PASTEUR DE QUEBEC, having an office at 2550 rue Marie- Fitzbach, Québec Québec, GIV 2J2

and

LES PETITES FRANCISCAINES DE MARIE, having an office at 201 115 rue Alfred-Morin, Baie-St Paul, Québec, G3Z OK6

RESPONDENTS – Respondent

Amended NOTICE OF APPEAL

(Article 352 C.C.P.)

Appellants

Dated October 14th, 2020

FACTS AND GROUNDS OF APPEAL

1. The Appellants appeal from a judgment of the Superior Court of Quebec bearing number 500-06-000904-181 rendered on May 21st, 2020, by the Honourable André Prévost, District of Montreal, which dismissed the application for class action;
2. The date of the judgment rendered at the hearing is May 21st, 2020;
3. The duration of the trial was three (3) days;
4. The Appellants file with this notice of appeal a copy of the first instance judgment in **Schedule 1**;

FACTS ARISING FROM THE CLAIM

5. The Appellants Mr. Marc Boudreau and Ms. N.P. seek leave to bring a class action in civil liability against the Respondents on behalf of persons who, like them, were physically, psychologically, emotionally, and/or sexually abused in Quebec by a member or employee of a religious congregation in the context of the victims' sojourn in the orphanages under the Respondents' administration, in the case of the Congregation Respondents, and at the directive, financing, and facilitation of same, in the case of the governmental Respondent;
6. The group to which the Appellants belong has thus far already counted over a thousand victims, falling within the following group description contained in the Re Amended Motion for Authorization ("Motion") (paras. 1.1 and 1.1.1) attached as **Schedule 2**;

1.1 All persons, and estates of deceased persons, who were victims of either psychological, and/or physical and/or sexual abuse, and/or subjected to persecution and/or human experimentation at any of the institutions operated/administered or directed by the Respondent congregations in the province of Quebec between the years of 1935 and 1975, inclusively.

1.1.1. Within this Class, three Sub-Groups are identified as:

(i) persons who were unaware of the Programme national de réconciliation avec les orphelins et orphelines de Duplessis (PNROOD);

(ii) persons aware of PNROOD but not having participated therein;

(iii) persons who participated in PNROOD.

7. Due to the horrific fact that abuse inflicted on children by clergy was an epidemic during our province's darkest times, there have been numerous class actions addressing these issues – among those, two involved class descriptions overlapping with the action at hand, and the Appellants have respectfully excluded the putative members of those actions from their class description (para. 1.1.2);

A) Mr. Marc Boudreau

8. Mr. Boudreau was severely beaten on repeated occasions during his stay at the Monastery of Huberdeau in Argenteuil, Quebec, where violence was often accompanied by measures reserved for the mentally ill, such as being placed in a straightjacket and frequent solitary confinement (paras. 2.5 to 2.8);

9. Similar treatment was inflicted on him at the Roberval monastery in Lac Saint Jean, with added humiliation tactics of being forced to appear in common areas in nothing more than underwear and enduring sexual molestation by his guard-post monitor (para. 2.9);

10. The subsequent sojourn at Berthollet imposed prison-like conditions on Mr. Boudreau, however this paled in comparison with the atrocities that ensued at Mont Providence Psychiatric Hospital in Rivières des Prairies in Montreal, where instructors, namely Professor Béliveau, took sadistic pleasure in either exposing Mr. Boudreau to violence at the hands of his peers or inflicting violence on him directly (para. 2.11);

11. The foregoing is compounded by the imposed designation of mental retardation on children like Mr. Boudreau which was a strategy promulgated by the congregational and governmental Respondent, yielding financial gains at the cost of epidemic mistreatment and resulting long-lasting trauma for the children falsely labeled as such;

B) Ms. N.P

12. Ms. N.P's experience at the L'Orphelinat L'Immaculée à Chicoutimi, Quebec, mirrored Mr. Boudreau's in terms of witnessing atrocities commonly inflicted on the child residents of orphanages;

13. Ms. N.P was spared the sexual molestation suffered by her putative co-Representative, however she was subjected to similar incidents of malnutrition, isolation, and frequent brutal beatings with no explicable reason nor provocation (paras. 2.38 to 2.40);
14. Both Appellants experienced fear, confusion, anguish, as well as, depleted sense of self-worth and a complete loss of trust in authority, particularly in men;
15. Mr. Boudreau suffered and continues to suffer serious ramifications of his trauma. He oscillates between waves of rage and disgust and bouts of overwhelming shame and sadness. His general distrust and insecurity have made him incapable of expressing love and affection - he has had tremendous trouble maintaining relationships (paras. 2.16 to 2.18);
16. Ms. N.P has found herself in a domestically abusive relationship with a much older man - a pattern not uncommon for victims of childhood violence (para. 2.45). She has been diagnosed with various forms of post-traumatic stress disorder which manifests itself through flash-backs, intrusive thoughts, trouble breathing, nausea, insomnia, loss of appetite, occasional agora-phobia and self-isolation, sense of hopelessness, low self-worth, crying spells, memory problems, suicidal thoughts and past symptoms of mania and rage (paras.2.50 to 2.51);
17. Ms. N.P has struggled with alcoholism for most of her life, which took hold in her early adolescence (para. 2.44) and despite vigorous efforts, she experiences severe social anxiety and has never been able to sustain employment (para. 2.45 to 2.47);
18. The childhood abuse suffered by both Mr. Boudreau and Ms. N.P did not constitute isolated acts. There has been systemic institutional abuse by clergy and other congregational employees in Quebec over several decades, affecting innumerable vulnerable victims;
19. The value of the subject matter of the dispute is \$350,000.00 for moral damages sustained by them solidarily from the Respondents to compensate from all the anguish, pain and suffering;
20. Furthermore, seeing as the emotional damage seen the severity of the physical and sexual abuse on the Appellants, the Appellants are entitled to claim \$500,000.00

- solidary from the Respondents as punitive and exemplary damages from the Defendants;
21. Appellants also claim \$25,000.00 solidarily from Respondent for cost of future therapy for each to deal with trauma of sexual aggression;
 22. Appellants wish to exercise on behalf of members of the class, an action in compensatory damages to sanction its negligence and willful blindness in their actions against the Duplessis Orphans;
 23. Appellants have asked for collective recovery of \$875,000.00 per member of the class and that the members of the class be the object of individual claims in accordance with Articles 591 to 691 C.P.C;
 24. This file is not confidential in so far as the Appellant Marc Boudreau, but is confidential in so far as the Appellant N.P;

ERRORS IN LAW AND IN FACT

25. The Trial Judge erred in his judgment both in law and in fact for the following reasons:
 - A. In Paragraph 78 of his judgement**, the Trial Judge erred when he concluded that the description of the group in the Appellants re-amended motion was confusing and does not enable a person to identify himself or herself as a member of the class;
 - B. In Paragraph 80 of his judgement**, the Trial Judge erred when he found that the Appellants Motion did not raise identical, similar or related issues of law or fact for Appellants and members of the class;
 - C. In support of the forgoing conclusion the Trial Judge** cites a recent judgment rendered by of the Quebec Court of Appeal in the case of Rozon c. Le Congressue 2020 QCCA 5 and refers in particular to the notes of the Honorable Justice Hamilton but a Motion to Leave to Appeal before the Supreme Court of Canada has been filed against this judgement and this Motion is still pending before the Supreme Court of Canada;

- D. In Paragraph 89 of his judgement**, the Trial Judge erred when he concluded that the re-amended Motion does not contain any allegation of fact that can enable a court to draw inferences of common and similar practices of one religious congregation and other religious congregations;
- E. In paragraph 105 of his judgement**, the Trial Judge erred when he concluded that the re-amended Motion does not meet the requirements of Article 575 sub paragraphs 1 and 4 and therefore, the class action could not be authorized;
- F. In paragraph 110 of his judgement**, the Trial Judge erred when he concluded that the facts alleged by the Appellants does not justify the conclusion sought by them, but in paragraph 123 and following of his judgement, he refers to the existence of a personal recourse of one of the Appellants, namely N.P and concludes that her quality as representative of a class will be limited to an action against one of the Respondents namely against Les Petites Franciscaines de Marie for a class that could be adequately defined according to her personal cause of action;
26. In summary the Appellants submit that the Trial Judge overlooked the recent jurisprudence of the Supreme Court of Canada whereby the Supreme Court concludes that a class action is effective for victims of systemic discrimination, particularly children, given the obstacles victims and children face in individual actions and that victims must be encouraged to enforce their legal rights;
27. Furthermore, the Trial Judge should have referred to **L'Oratoire Saint-Joseph du Mont-Royal c. J.J. 2019 C.S.C. 35 paragraph 6** and following as well as ***Infineon Technologies AG v. Option consommateurs* [2013] 3 SCR 600, para. 60** and which cases confirm that at the authorization stage a class action is limited to a filtering mechanism to rule out frivolous or unsustainable claims, and without prejudice to the substance of the dispute;
28. Finally, the Trial Judge has erroneously accepted the submission of the Attorney General of Quebec whereby he refers to the similarity of facts and issues in a prior decision that was rendered 1995 in another authorization case of Kelly vs. La

- Communauté des Sœurs de la Charité de Québec, [1995] J.Q. no 3377 (QL) and its impact on Article 575 subparagraph 1 and 2 C.P.C criteria;
29. Furthermore, the Trial Judge also refers to the publicity and program of financial aid and disbursements of the PNROOD programs and the acceptance of these programs by many of the Duplessis Orphans who are part of the class in the present proceedings;
 30. Appellants submit that since the Kelly judgement, the passage of time has evolved rules concerning prescription through the enactment and enlargements of Article 296.1 C.c.Q as well as an increasingly more liberal approach by the courts especially in cases of sexual and physical abuse;
 31. Moreover, in regard to the PNROOD program and a signing of a Quittance, the object of the program was not a settlement of claim in the context of sexual and physical abuse suffered by Orphans who were children, but rather financial assistance for them who attended certain institutions at various times;
 32. In this respect, these vulnerable victims traded off her/his legal and human rights for a mere paltry sum of \$15,000.00 and therefore any Quittance signed by them should not prevent them from obtaining reasonable compensation from all the Respondents in the present case;
 33. In light of the forgoing, the Trial Judge should have authorized a class action with at least N.P as the representative of the class since he concluded that she has a personal action against Les Petites Franciscaines de Marie, one of the Respondents, as confirmed by paragraphs 191 and 192 of his judgement;

CONCLUSIONS

34. The Appellants will ask the Court of Appeal to:
 - I. **ALLOW** the appeal;
 - II. **SET ASIDE** the first instance judgment;
 - III. **GRANT** the conclusions of the re-amended class action and confirm the Appellants or at least N.P. as representative(s) of the class;

- IV. **CONDEMN** the Respondents to pay the Appellants legal costs both in first instance and on appeal;

Montreal, October 14th, 2020

Me. Alan M. Stein
Attorney for the APPELLANTS
4 Westmount Square, Suite 150
Westmount, QC
H3Z 2P9
Tel:(514) 842-9994, Ext. 1812
Fax:(514) 842-1112
alanstein.avocat@gmail.com

TO: THE ATTORNEY GENERAL OF QUEBEC

Me Alexis Milette

Me Émilie Fay-Carlos

1, rue Notre-Dame Est, bureau 8.00

Montréal (Québec) H2Y 1B6

Téléphone : 514 393-2336, poste 51497(M^e Fay-Carlos)
poste 51929 (M^e Milette)

Télécopieur : 514 873-7074

Adresse pour notification par moyen technologique :

bernardroy@justice.gouv.qc.ca

THE SISTERS OF PROVIDENCE

and

LES SOEURS DE MISERICORDE DE MONTREAL

and

CONGREGATION DES SOEURS DE NOTRE-DAME AUXILIATRICE

and

LES PETITES FRANCISCAINES DE MARIE

and

CONGREGATION DES SOEURS DE NOTRE-DAME AUXILIATRICE

Me Pierre L. Baribeau

Pierre-L. Baribeau - Avocat inc.

500, Place D'Armes, bureau 2810

Montréal (Québec) H2Y 2W2

Téléphone : 514 239-1084

Courriel : pierre@plbavocat.com

Pour Les Sœurs de la Providence, Les Sœurs de Miséricorde de Montréal, Congrégation des Sœurs de Notre-Dame auxiliatrice et Les Petites Franciscaines de Marie

THE GREY NUNS OF MONTREAL

and

LES SOEURS DOMINICAINES DE LA TRINITÉ

Me Julien Denis

Me Luc Lachance

LDB Avocats

408, rue McGill

Montréal (Québec) H2Y 2G1

Téléphone : 514 879-9201

Courriels: notification@ldbavocats.ca; llachance@ldbavocats.ca; jdenis@ldbavocats.ca

Pour Les Sœurs grises de Montréal et Les Sœurs Dominicaines de la Trinité

LES SOEURS DU BON-PASTEUR DE QUEBEC

and
LES PETITES FRANCISCAINES DE MARIE
and

Me Louis Carrière
Me Benoît Mailloux
Fasken Martineau DuMoulin
140, Grande Allée Est, bureau 800
Québec (Québec) G1R 5M8
Télécopieur/Fax : +1 418 647 2455
lcARRIERE@fasken.com

Pour Les Sœurs du Bon Pasteur de Québec et Les Sœurs de la Charité de Québec

and
SOEURS DE LA CHARITE DE QUEBEC

M^e Benoît Mailloux/ M^e Christian Trépanier
Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
140, Grande Allée Est, bureau 800
Québec (Québec) G1R 5M8
M^e Christian Trépanier
Téléphone : 418 640 2011
Courriel : ctrepanier@fasken.com
M^e Benoit Mailloux
Téléphone : 418 640 2012
Courriel : bmailloux@fasken.com

RESPONDENTS – Respondent

TAKE NOTICE of the present Amended Notice of Appeal

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, October 14th, 2020

Me. Alan M. Stein
Attorney for the APPELLANTS
4 Westmount Square, Suite 150
Westmount, QC
H3Z 2P9
Tel:(514) 842-9994, Ext. 1812
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Me. Alan M. Stein
Lawyer for APPELLANTS - *Petitioner*
4 Westmount Square, Suite 150
Westmount (Québec) H3Z 2P9
Tel: 514.893.2416
Fax: 514.842.1112
Email: alanstein.avocat@gmail.com

