

CANADA

**SUPERIOR COURT
(Class action)**

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. : 500-06-000352-068

Sebastian, resident of the City of Whitefish, Montana herein electing domicile for purposes of these proceedings c/o 286 St-Paul West, Suite 100, Montreal (Quebec) H2Y 2A3

Petitioner

v.

The English Montreal School Board (formerly known as the Protestant School Board of Greater Montreal), having its principal place of business at 6000 Fielding Avenue, Montreal (Quebec) H3X 1T4

-and-

Renwick Spence, residing and domiciled at 7 Riverview, Morin-Heights (Quebec) J0R 1H0

Respondents

**MOTION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE
STATUS OF REPRESENTATIVE
(Articles 1002 etc. C.C.P.)**

**IN SUPPORT OF HIS CLAIM, THE PETITIONER RESPECTFULLY STATES
THAT:**

1. The Petitioner, Sebastian, seeks the authorization of a class action, on his own behalf and on behalf of the members of the following class of which he himself is a member:



“All persons, who, from the late 1960’s to early 1980’s, were students at the high school level at Montreal West High School (currently known as Royal West Academy) governed by the Protestant School Board of Greater Montreal (currently known as the English Montreal School Board).”

hereinafter known as “the class”;

2. The facts giving rise to an individual action on behalf of the Petitioner are as follows:

THE RESPONDENTS

- **The English Montreal School Board**

- 2.1 The English Montreal School Board (“EMSBB”) is the largest English public school board in Quebec, the whole as appears from an excerpt of this Respondent’s website, identified hereto as exhibit **R-1**;
- 2.2 The EMSBB replaced the Protestant School Board of Greater Montreal (“PSBGM”) on July 1, 1998, when the province of Quebec created new school boards along linguistic lines, the whole as appears from exhibit **R-1**;
- 2.3 The EMSBB’s network consists of 85 schools and centres, the whole as appears from exhibit **R-1**;
- 2.4 Among these 85 schools, the EMSBB governs Royal West Academy (“RWA”), the whole as appears from exhibit **R-1**;
- 2.5 RWA was formerly known as Montreal West High School (“MWHS”), a school for students from grade 7 to 11, until 1983 when it underwent a name change to become RWA, the whole as appears from an excerpt of RWA’s website, identified in support hereto as exhibit **R-2**;
- 2.6 RWA was the product of the merger of Royal Vale School and Montreal West School in 1983, the whole as appears from exhibit **R-2**;



- 2.7 RWA presently has just over 850 students in grades 7 to 11, the whole as appears from exhibit **R-2**;
- 2.8 The Respondent EMSB is by the present requested to provide to counsel for the Petitioner the name of its insurer(s) and copies of all policies applicable to the period of time covered by the present motion;

▪ **Renwick Spence**

- 2.9 Mr. Renwick Spence (“Spence”) is a 77 year-old, retired biology teacher, the whole as appears from an article in the Montreal Gazette dated February 2005, identified in support hereto as exhibit **R-3**;
- 2.10 Spence was a teacher of MWHS, currently known as RWA;
- 2.11 He taught biology to students of this high school from the late 1960’s to early 1980’s;
- 2.12 While carrying out his functions as an educator, Spence was an employee of the PSBGM, currently known as the EMSB;
- 2.13 Spence was seen as a person in authority by the high school students of MWHS;
- 2.14 Spence is currently facing several charges of sexual assault allegations, the whole as appears from an article in the Montreal Gazette dated April 11, 2006, identified in support hereto as exhibit **R-4.**;

THE RESPONDENTS’ BREACHES

▪ **English Montreal School Board**

- 2.15 The EMSB is a non-profit organization whose mission is to support its schools and centres in their efforts to educate students within a caring, safe and inclusive learning community;
- 2.16 In carrying out its mission, the EMSB’s role is to ensure the full development and safety of all its students;



- 2.17 The EMSB's role is also to oversee a structured and sound learning environment for all its students;
 - 2.18 The EMSB must also work to promote better communication between school administrators, teachers, parents and students;
 - 2.19 The PSBGM, currently the EMSB, was made aware of Spence's actions by students who considered themselves this teacher's victims, the whole as appears from exhibit **R-3**;
 - 2.20 At no time did the EMSB see fit to address the complaints of these students;
 - 2.21 The EMSB omitted to repair the damages caused to its students by Spence's actions;
 - 2.22 The EMSB omitted to prevent further occurrences of breaches by Spence from happening to more of its students;
 - 2.23 By keeping Spence in a position of authority, the EMSB exacerbated the situation, in that it let Spence continue his intentional acts of abuse on its students;
 - 2.24 At all times relevant to the present action, the EMSB was aware or should have been aware of the breaches committed by its employee Spence in the performance of his duties as a teacher;
 - 2.25 The EMSB is liable to reparation for the damages caused by the fault of its employees in the performance of their duties;
- **Mr. Renwick Spence**
- 2.26 As an educator, Spence's role was to foster a desire for learning and to encourage students to become better people;
 - 2.27 As a teacher, Spence also had the duty to provide all students with the opportunity to develop their talents and achieve their personal best;
 - 2.28 Spence used his position as a teacher to develop bonds of trust between himself and students he encountered;



- 2.29 Spence was fully aware of and preyed on the vulnerability and youth of students, members of the class;
- 2.30 Spence, used and abused of his position of authority to his advantage, fishing for victims from within the pool of students he regularly crossed, and inviting them to get involved in extra-curricular activities;
- 2.31 Spence developed and maintained an inappropriate relationship with these students;
- 2.32 Spence sometimes invited these students to his cottage in Morin-Heights under the pretext of taking part in extra-curricular activities such as bird watching or cross-country skiing;
- 2.33 Spence used his Morin-Heights cottage as an extension of his classroom and engaged students in collecting specimens from that locale for the many biological displays in his MWHS classroom;
- 2.34 Spence also engaged young students in ornithology and nature studies, taking them for extended walks in the woods and forests around his cottage to enhance their understanding of subjects such as ecology, speciation, and plant biology;
- 2.35 Spence's cottage was also set up with microscopes and other scientific equipment;
- 2.36 One of Spence's "seduction" routines at his cottage was to encourage young boys to produce sperm that could subsequently be examined under one of the microscopes that he had on hand;
- 2.37 Spence would also purchase alcohol for the students that he took to his cottage, all of whom were underage;
- 2.38 Spence encouraged the students to drink to the point of intoxication;
- 2.39 The consumption of alcohol by underage students contributed to their sense of complicity in "forbidden" behaviour;
- 2.40 The solicitation of Spence's victims to engage in formally "illegal" behaviour not only enhanced feelings of complicity but also served as an impediment to Spence's victims disclosing to their parents, or



other authorities, the activities at Spence's cottage in which they were involved as unwilling participants;

- 2.41 During these visits, Spence preyed on his victims and physically, sexually and/or mentally abused them;
- 2.42 Eight (8) male victims, former students of Montreal West High School, have come forward and Spence now faces nearly 15 counts of assault and indecency on a minor, the whole as appears from an excerpt of the Sûreté du Québec's website, identified hereto as exhibit **R-5**;
- 2.43 At all times relevant to the present action, Spence knew or should have known the implications of his exploitation of his position of authority as the educator of the students, members of the class;
- 2.44 At all times relevant to the present action, Spence knew or should have known the physical, psychological and moral damages his actions caused to the students, members of the class;

THE PETITION FOR PSEUDONYM ORDER

- 2.45 The Petitioner requests the use of a pseudonym for all legal proceedings and court documents;
- 2.46 The Petitioner requests that all class members also have the right to use pseudonyms;
- 2.47 The disclosure of the Petitioner's identity would have a negative impact on him, the whole as appears from a letter by Dr. Michael Newman, identified hereto under seal as exhibit **R-6**;
- 2.48 The identity of the Petitioner should be protected to ensure that other class members will be more likely to come forward if they feel their identity will be kept confidential;
- 2.49 The pseudonym order will provide greater access to justice;
- 2.50 The Petitioner is prepared to provide the Court and counsel for the Respondents with his name and that of any known class member under seal and provided that such information be protected and kept confidential;



THE PETITIONER

- 2.51 The Petitioner, Sebastian, 42 years old, is a member of the class described above;
- 2.52 Sebastian was a student at MWHS, currently known as RWA, from 1975 to 1981;
- 2.53 During these years, Spence was Sebastian's homeroom teacher and biology teacher from 1978 to 1979;
- 2.54 In the winter of 1979, when Sebastian was in Grade 9, he was invited by Spence to his cottage in Morin Heights;
- 2.55 This invitation was made under the pretext of meeting Jack "Rabbit" Johannson, a famous skier, and his daughter;
- 2.56 During this visit to the cottage, Sebastian was sexually assaulted by Spence on three occasions;
- 2.57 On these occasions, Sebastian was approached by Spence and endured extremely uncomfortable situations he did not consent to;
- 2.58 With each occasion, Sebastian became more vulnerable;
- 2.59 These encounters with Spence had a deeply profound negative impact on Sebastian's psychological well-being as well as on his performance in school;
- 2.60 Prior to these encounters with Spence, Sebastian was an active and engaged student at MWHS, who was accomplished in music and played in the honour band, a member of the wrestling team, as well as a member of student council;
- 2.61 In 1981, shortly after his encounter with Spence, Sebastian dropped out of school at the age of 15;
- 2.62 As a direct result of Spence's actions, Sebastian began to drink at the age of 15 and was a profound alcoholic until the age of 30, hence for 15 years;



- 2.63 Sebastian's self-destructive behaviour and emotional fall-out were a direct result of Spence's assaults;
- 2.64 Several of Sebastian's teachers at MWHS contacted Sebastian's parents, expressing their alarm and concern over how depressed and alienated Sebastian's comportment had become and drew his parents' attention to a real possibility that he may be suicidal;
- 2.65 Sebastian's parents arranged for him to see a child psychiatrist at the Montreal Children's Hospital;
- 2.66 Although Sebastian saw this psychiatrist once a week for a year throughout the period when he progressively and completely abandoned his high school studies, and although Sebastian's parents notified the psychiatrist that something appeared to have happened at Spence's cottage that Sebastian was unable to talk about, Sebastian was unable to even broach the topic of Spence's sexual assaults upon him, even with the therapists solicitations to talk, stressing that he simply could not talk about what had happened;
- 2.67 With time, Sebastian finally went back to school and got a university degree with much struggle;
- 2.68 Sebastian now works as a carpenter in Montana;
- 2.69 Sebastian has been sober since the age of 30, hence for the last 12 years;
- 2.70 Since his assault by Spence at the age of 15, Sebastian endured trauma and shame and harboured a deep fear of coming forward and felt unable to disclose his abuse at an earlier time;
- 2.71 Sebastian became withdrawn from his family and friends;
- 2.72 Sebastian could not even bear to think about the abuse he endured;
- 2.73 Only recently has Sebastian come to terms with his situation and found the emotional strength to speak out;
- 2.74 Sebastian has recently laid a criminal complaint against Spence, the whole as appears from a copy of a letter from the petitioner to



Benoît Roberge of the Sûreté du Québec dated October 9, 2004, produced under seal as exhibit **R-7**;

- 2.75 The Petitioner suffered direct damages in relation to his encounters and/or relationship with the Respondent Spence;
 - 2.76 The Petitioner does not yet have the full capacity to understand the implications of what Spence did to him and the damages that were caused to him by this Respondent's actions;
 - 2.77 The Petitioner suffered direct and severe damages in relation to the Respondent EMSB's omission to address complaints from students regarding Spence's actions and to prevent further breaches by Spence from occurring;
 - 2.78 The Petitioner is in his rights to hold the Respondents responsible for these damages and this because of the breaches they committed;
 - 2.79 The Petitioner evaluates the amount of non-pecuniary damages to which he is entitled, namely physical, psychological and moral damages caused by his encounters and/or relationship with the Respondent Spence to be \$ 250 000, which can be adjusted;
 - 2.80 Furthermore, the Petitioner evaluates the amount to which he is entitled for the pecuniary damages suffered by him, namely past and future loss of income, loss of earning capacity and special damages, namely cost of therapy, caused by his encounters and/or relationship with the Respondent Spence to be \$750 000, which can be adjusted;
3. The facts giving rise to an individual action on behalf of each class member against the respondents are, other than the facts set out in paragraph 2 with the necessary adaptations, the following :
 - 3.1 Each class member was a student at MWHS, currently known as RWA and this, while Spence was an employee there;
 - 3.2 Each class member had an encounter and/or relationship with Spence;
 - 3.3 Each class member was physically, sexually and/or mentally assaulted by Spence;



- 3.4 Each class member suffered physical, psychological and moral damages as a result of their encounter and/relationship with Spence;
- 3.5 Each class member suffered pecuniary damages as a result of their encounter and/relationship with Spence;
4. The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impracticable in that :
 - 4.1 The average size of a high school class at MWHS during the approximate 15 year time period covered by the present action was approximately 25 students, and there were more than one class at each grade level;
 - 4.2 As a result, thousands of people are members of the class described in the present motion;
 - 4.3 It is impossible to know the identity of the persons who attended MWHS because of its continuance in 1983 as RWA;
 - 4.4 It is impossible to know the identity of the persons who encountered Spence and were victims of his actions;
 - 4.5 With respect to the previous paragraphs, the composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impracticable;
5. The questions of fact and of law, that are identical, similar or related and bind each class member to the respondents, that your petitioner intends to have settled are:
 - 5.1 The class members were students at MWHS, currently known as RWA, between the late 1960's and the early 1980's;
 - 5.2 At all times, the Respondent Spence was a teacher and employee of MWHS, governed by the PSBGM, currently the EMSB;
 - 5.2 The Respondents committed breaches in exercising their respective roles;



- 5.3 The Respondent EMSB committed breaches in omitting to effectively control, repair and prevent the actions of their employee Spence and the damages that resulted from such actions;
- 5.4 The Respondent EMSB is strictly liable for the fault of its employee carried out in the performance of his duties;
- 5.5 The Respondent EMSB's insurance company/companies obligations towards the Petitioner and class members;
- 5.6 The Respondent Spence physically, mentally and/or emotionally assaulted the class members;
- 5.7 The Respondent Spence is liable for these grave breaches;
- 5.8 The Respondents' breaches caused direct damages to the class members or contributed to such damages;
- 5.9 The class members are in their right to claim reparation for the damages they incurred due to the Respondents breaches;
- 5.10 The nature and the amount of the damages that the class members can claim from the Respondents;
6. The questions of fact and of law particular to each class member consist of :
 - 6.1 The severity of the damages suffered;
 - 6.2 The amount of damages that each member has the right to claim from the Respondents, as pecuniary and non-pecuniary damages;
7. It is opportune to grant the class action for the benefit of the class members;
8. The nature of the action your Petitioner intends to bring on behalf of the class members is :

An action in damages;
9. The conclusions your Petitioner seeks are :



GRANT the class action of the Petitioner and the group members against the Respondents;

GRANT the Petitioner's petition for pseudonym order for himself and for the class members;

CONDEMN the Respondents jointly and severally, to pay to the Petitioner the amount of two-hundred fifty thousand (250 000\$), for the physical, psychological and moral damages incurred, with interest at the legal rate, plus the additional indemnity provided by law, as of and from the date of service, which can be adjusted;

CONDEMN the Respondents jointly and severally, to pay to each group member an amount to be determined as compensation for the physical, psychological and moral damages incurred, with interest at the legal rate, plus the additional indemnity provided by the law, to accrue from the date of service;

CONDEMN the Respondents jointly and severally, to pay to the Petitioner the amount of seven-hundred fifty thousand (750 000\$), for past and future loss of income, loss of earning capacity and special damages, with interest at the legal rate, plus the additional indemnity provided by law, as of and from the date of service, which can be adjusted;

CONDEMN the Respondents jointly and severally, to pay to each group member an amount to be determined as compensation for past and future loss of income, loss of earning capacity and special damages, if any, with interest at the legal rate, plus the additional indemnity provided by the law, to accrue from the date of service;

CONDEMN the Respondent EMSB's insurance company/companies to pay to each group member any amount which flows from the application of the insurance policy/policies applicable to the period of time covered by the present motion;

ORDER the collective recovery of member claims for the non-pecuniary damages if the proof allows for it;

ORDER the collective recovery of member claims for the pecuniary damages if the proof allows for it and subsidiarily, order the individual recovery of member claims;

THE WHOLE with costs, including notice and expertise costs;



10. Your Petitioner, Sebastian, asks that the status of representative of the class be ascribed to him;
11. Your Petitioner is in a position to represent the class members adequately and this for the following reasons :
 - 11.1 Your Petitioner is disposed to invest the necessary resources and time towards the accomplishment of all formalities and tasks necessary for the bringing of the present class action and he is committed to collaborate fully with his attorneys;
 - 11.2 Your Petitioner is capable of providing his attorneys with the information useful to the bringing of the present class action;
 - 11.3 Your Petitioner acts in good faith with the only goal of obtaining justice for himself and each class member;
 - 11.4 Your Petitioner has the intellectual, moral and psychological support of his family, namely his sister who is a law professor at a Canadian University;
 - 11.5 Your Petitioner intends to ask for financial aid from the *Fonds d'aide aux recours collectifs*;
12. Your Petitioner proposes that the class action be carried out before the Superior Court of the district of Montreal for the following reasons:
 - 12.1 The Respondent EMSB has a place of business in Montreal;
 - 12.2 Attorneys for the Petitioner have their offices in Montreal;
 - 12.3 An important part of the class members reside in the district of Montreal and its surroundings;

FOR THESE REASONS, THE COURT:

GRANTS the motion for authorization to institute a class action and to obtain the status of representative;

GRANTS the action in damages by way of a class action;

GRANTS the Petitioner's motion for pseudonym order for himself and for the class members;



ASCRIBES the status of representative to Sebastian, on behalf of the group of people described hereafter:

“All persons, who, from the late 1960’s to early 1980’s, were students at the high school level at Montreal West High School (currently known as Royal West Academy) governed by the Protestant School Board of Greater Montreal (currently known as the English Montreal School Board). “

IDENTIFIES the principal questions of fact and law to be determined collectively as follows:

The class members were students at MWHS, currently known as RWA, between the late 1960’s and the early 1980’s;

At all times, the Respondent Spence was a teacher and employee of MWHS, governed by the PSBGM, currently the EMSB;

The Respondents committed breaches in exercising their respective roles;

The Respondent EMSB committed breaches in omitting to effectively control, repair and prevent the actions of their employee Spence and the damages that resulted from such actions;

The Respondent EMSB is strictly liable for the fault of its employee carried out in the performance of his duties;

The Respondent EMSB’s insurance company/companies obligations towards the Petitioner and class members;

The Respondent Spence physically, mentally and/or emotionally assaulted the class members;

The Respondent Spence is liable for these grave breaches;

The Respondents’ breaches caused direct damages to the class members or contributed to such damages;

The class members are in their right to claim reparation for the damages they incurred due to the Respondents breaches;

The nature and the amount of the damages that the class members can claim from the Respondents;



IDENTIFIES as follows the sought conclusions:

GRANT the class action of the Petitioner and the group members against the Respondents;

GRANT the Petitioner's petition for pseudonym order for himself and for the class members;

CONDEMN the Respondents jointly and severally, to pay to the Petitioner the amount of two-hundred fifty thousand (250 000\$), for the physical, psychological and moral damages incurred, with interest at the legal rate, plus the additional indemnity provided by law, as of and from the date of service, which can be adjusted;

CONDEMN the Respondents jointly and severally, to pay to each group member an amount to be determined as compensation for the physical, psychological and moral damages incurred, with interest at the legal rate, plus the additional indemnity provided by the law, to accrue from the date of service;

CONDEMN the Respondents jointly and severally, to pay to the Petitioner the amount of seven-hundred fifty thousand (750 000\$), for past and future loss of income, loss of earning capacity and special damages, with interest at the legal rate, plus the additional indemnity provided by law, as of and from the date of service, which can be adjusted;

CONDEMN the Respondents jointly and severally, to pay to each group member an amount to be determined as compensation for past and future loss of income, loss of earning capacity and special damages, if any, with interest at the legal rate, plus the additional indemnity provided by the law, to accrue from the date of service;

CONDEMN the Respondent EMSB's insurance company/companies to pay to each group member any amount which flows from the application of the insurance policy/policies applicable to the period of time covered by the present motion;

ORDER the collective recovery of member claims for the non-pecuniary damages if the proof allows for it;

ORDER the collective recovery of member claims for the pecuniary damages if the proof allows for it and subsidiarily, order the individual recovery of member claims;



THE WHOLE with costs, including notice and expertise costs;

DECLARES that, unless exclusion, the members of the group will be bound by all judgement to intervene on the class action in the manner provided by the law;

SETS the deadline for opting-out to thirty (30) days, after which the members of the group who will not have prevailed themselves of the means of exclusion will be bound by any judgement to intervene;

ORDERS the publication of a notice to the members of the group, according to the terms set forth in the form of the Rules of practice of the Superior Court of Quebec in civil matters, to be published once in the daily newspaper The Gazette, once in The Suburban and once in The Globe and Mail;

ORDERS the Respondents to publish the notices to the members, in French and in English, on their website;

AUTHORIZES counsel for the Petitioner to publish the notices to the members on their own website;

SETS the deadline provided for the publishing of the notice to members at thirty (30) days of the final judgment to intervene on the present motion;

TRANSMITS the file to the Chief Justice for the determination of the district in which the class action will have to be instituted and the designation of a judge for the hearing;

ORDERS the clerk of this Court, in the case that the class action must to be instituted in another district, to transmit the file, as of the decision of the Chief Justice, to the clerk of this other district;

THE WHOLE with costs, including the costs of notice and expertise.

Montréal, June 7, 2006

(sgd) Lauzon Bélanger

LAUZON BÉLANGER INC.

Attorneys for the Petitioner



NOTICE OF PRESENTATION

TO: **English Montreal School Board**
6000 Fielding Avenue
Montreal (Quebec) H3X 1T4

Renwick Spence
7 Riverview
Morin-Heights (Quebec) J0R 1H0

PLEASE BE ADVISED that the foregoing *Motion to institute a class action and to obtain the status of representative* will be presented for adjudication before one of the Honourable judges of the Superior Court, sitting in and for the district of Montréal, on June 22, 2006 at the Montreal Courthouse, 1 Notre-Dame Street East, in room 2.16, at 9:00 a.m. or as soon thereafter as counsel may be heard.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montréal, June 7, 2006

(sgd) Lauzon Bélanger

LAUZON BÉLANGER INC.

Attorneys for the Petitioner



C A N A D A

**SUPERIOR COURT
(Class action)**

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Sebastian

No. :

Petitioner

v.

**The English Montreal School Board
(formerly known as the Protestant
School Board of Greater Montreal)**

-and-

Renwick Spence

Respondents

**LIST OF EXHIBITS IN SUPPORT OF THE MOTION TO INSTITUTE
A CLASS ACTION AND TO OBTAIN THE STATUS OF
REPRESENTATIVE**

Exhibit R-1 Excerpt from the EMSB's website;

Exhibit R-2 Excerpt from RWA's website;

Exhibit R-3 Article in the Montreal Gazette dated February 2005;

Exhibit R-4 Article in the Montreal Gazette dated April 11, 2006;

Exhibit R-5 Excerpt of the Sûreté du Québec's website;

Exhibit R-6 Letter by Dr. Michael Newman in support of the Petitioner's motion for pseudonym order, under seal;



Exhibit R-7 Copy of a letter from the petitioner to Benoît Roberge of the Sûreté du Québec dated October 9, 2004 laying a criminal complaint against the respondent Spence, under seal;

Montréal, June 7, 2006

LAUZON BÉLANGER INC.
Attorneys for the Petitioner

