

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No.: 500-06-000743-159

SUPERIOR COURT  
(Class Action)

---

BENEDICT MATTHEW BISSONNETTE

Applicant

v.

CITY OF WESTMOUNT

Respondent

-and-

FONDS D'AIDE AUX ACTIONS  
COLLECTIVES

Impleaded Party

-and-

TRUDEL JOHNSTON & LESPÉRANCE

Applicant Attorneys

---

APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT  
AND FOR APPROVAL OF CLASS COUNSEL'S FEES  
(Articles 590, 591 and 593 *C.c.p* and article 32 of the *Act  
respecting the Fonds d'aide aux actions collectives*, ch. F-  
3.2.0.1.1)

---

TO THE HONOURABLE MARC DE WEVER OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE  
APPLICANT AND THE APPLICANT ATTORNEYS SUBMIT THE  
FOLLOWING:

1. On January 31<sup>st</sup>, 2017, the Court authorized the class action for settlement purposes and approved the notice program set out in section 4.1 of the "Settlement Agreement & Transaction", Exhibit P-1 (hereinafter the "Settlement Agreement");
2. The class was described as follows in this authorization judgment:

*All persons who, from 1953 to 1987, were sexually abused by John Garland while participating in the sports or recreation programs offered by the City of Westmount.*

3. Notice has been sent to class members in conformity with the Court's order;
4. No objections to the Settlement Agreement were received by Class Counsel, and no class members have elected to opt out;
5. Since the Settlement Agreement was announced, ten (10) new class members have come forward, bringing the current total number of known class members to fifteen (15);
6. For the reasons that follow, the Applicant asks that this Court approve the Settlement Agreement;
7. The Applicant Attorneys also request that this Court approve their fees as provided for in the "Professional Appointment and Agreement on Extrajudicial Fees" concluded with the Applicant, Exhibit P-2;

#### A. OVERVIEW OF THE SETTLEMENT AGREEMENT

##### i. Compensation under the Settlement Agreement

8. The Settlement Agreement provides for the creation of a "Total Settlement Fund", into which the Defendants will pay the following amounts :
  - 8.1. If there are between one (1) and ten (10) accepted claimants, \$ 1,000,000;
  - 8.2. If there are between eleven (11) and twenty-five (25) accepted claimants, an additional amount of \$ 100,000 for each accepted claimant over and above ten (10), up to a maximum of \$ 2,500,000;
9. The parties have agreed to attempt to renegotiate a new settlement if there are more than twenty-five (25) accepted claimants;
10. The settlement agreement provides for Base Compensation of \$ 35,000 for each accepted claimant;
11. After deduction of Base Compensation for each accepted claim, adjudicative costs and disbursements, class counsel's fees and the

Applicant's disbursements, the remainder of the Total Settlement Fund will be distributed among class members who have claimed Additional Compensation;

12. Additional Compensation is intended for class members who suffered more severe consequences or repeated and frequent symptom(s) and/or damage(s);
13. Additional Compensation will be awarded on a *pro rata* basis according to the severity and frequency of the symptom(s) and/or damage(s) suffered by each class member who has claimed Additional Compensation;
14. The relative severity and frequency of the symptom(s) and/or damage(s) suffered by class members will be determined using the Compensation Grid found at Schedule G to the Settlement Agreement;
15. This exercise will be conducted by an Internal Adjudicator at Class Counsel's Firm, namely M<sup>e</sup> Gabrielle Gagné, who has had no involvement in the present matter;
16. Class members will be entitled to challenge M<sup>e</sup> Gagné's determination of Additional Compensation before an Adjudicator in the manner described below;

ii. Confidentiality of the Claims Process

17. Confidentiality was a key concern for the Applicant and Class Counsel in negotiating the Settlement Agreement;
18. To this end, the parties have agreed to an entirely confidential claims process, within which only a limited and pre-determined list of persons will have access to claimants' information;
19. As provided for by sections 7.3 - 7.5 of the Settlement Agreement, only the following persons will have access to claimants' information: i) Class counsel ii) named Defence counsel iii) named internal Counsel for the Defendant iv) liability insurers for the Defendant, but only for the claims relating to their respective policies v) named archivists for the Defendants, but only if a claimant is not able to provide documentation or memorabilia proving participation in sports or recreation activities organized by the Defendant vi) the Adjudicator;

20. The Defendant will be entitled to challenge only the admissibility of claimants (except for five (5) pre-approved claimants), and not the distribution of the Additional Compensation;
21. If the Defendant challenges the admissibility of a claimant, the matter will be brought before an Adjudicator mutually designated by the parties;
22. The Adjudicator will render her decision on the sole basis of the materials submitted by the claimant and written submissions of the parties, thereby protecting class members' intimacy and confidentiality;

### iii. Memorial to Class Members

23. Drawing the public's attention to the issue of childhood sexual abuse and honoring its victims were other important desires held by the Applicant;
24. To this end, the parties have agreed that an anonymous memorial garden will be built in the vicinity of the Westmount Recreation Centre;

### iv. Notice Plan

25. Section 4.2 of the Settlement Agreement provides that notice of approval of the Settlement Agreement is to be disseminated to class members within seven (7) days from the date on which the Approval Order becomes final, in the following way:
  - a) Class Counsel will send the Notice of Settlement Approval by e-mail to Class Members who have provided them with their contact information;
  - b) Class Counsel will disseminate the Notice of Settlement Approval in the following manner:
    - i. via a Facebook advertisement campaign;
    - ii. by posting the Notice and a copy of the Settlement Agreement on Class Counsel's website;
    - iii. by posting the Notice and a copy of the Settlement Agreement on the class action registry of the Court;
    - iv. by posting the Notice and a copy of the Settlement Agreement on the class action registry of the Canadian Bar Association;

## B. THE SETTLEMENT AGREEMENT IS FAIR AND REASONABLE

26. The criteria which the case-law have established for approval of a class action settlement are the following:
  - i. The Plaintiff's chances of success;
  - ii. The nature and breadth of evidence which would be tendered;
  - iii. The expected length of the litigation;
  - iv. Good faith of the parties;
  - v. The attorneys' recommendation and their experience;
  - vi. The recommendation of a neutral third party;
  - vii. The nature and number of objections to the settlement; and
  - viii. The terms of the settlement;
27. The Applicant submits that analysis of all of these criteria should lead this Court to conclude that the settlement agreement is fair and reasonable and in the best interest of class members;
  - i. The Plaintiff's chances of success
28. Considering, among other things, the available evidence of the nature of Mr. Garland's abuse and the rule at art. 1463 of the *Civil code of Québec*, the Applicant is of the opinion that class members' chances of success in this litigation were high;
29. However, each Class member would have had to come forward and testify, including to lead evidence regarding potential prescription issues under articles 2904 and 2926.1 of the *Civil code of Québec*. At the end of a lengthy legal process, some Class members may have lost their right to receive compensation, being unable to satisfy the criteria provided for under those articles;
30. In light of these facts, the Settlement Agreement is a favorable result for class members in that it provides for levels of compensation which are in line with the compensation awarded in the jurisprudence in similar cases of childhood sexual abuse;

ii. The nature and breadth of evidence which would be tendered

31. In this case, the parties would have tendered a great deal of evidence on, among other things, the Defendant's knowledge, or lack of knowledge, of the abuse committed by Mr. Garland;
32. This evidence would have been complicated to obtain due to the time elapsed since this abuse and the corresponding difficulty in locating witnesses, not to mention the fact that Mr. Garland died in June 2012;

iii. The expected length and cost of the litigation

33. This litigation could take several years were it to proceed to trial and prove costly for the parties involved;
34. Conversely, having obtained a settlement less than two years after the filing of this class action is a favorable result for class members;
35. In this respect, the Applicant wishes to stress that the youngest class members were abused by Mr. Garland almost thirty (30) years ago, and that the oldest class members suffered abuse over sixty (60) years ago;

iv. Good faith of the parties

36. The Settlement was negotiated at arm's-length and in utmost good faith by the parties;

v. The attorneys' recommendation and their experience

37. Class and Defence counsel have ample experience in class actions;
38. As concerns Class Counsel, this has been the focus of their practice for close to twenty (20) years;
39. Furthermore, Class Counsel obtained a highly similar settlement for the plaintiffs in another childhood sexual abuse class action in *Sebastian v. English Montreal School Board*, C.S. No. 500-06-000352-068;

vi. The recommendation of a neutral third party

40. The Applicant views such a recommendation as unnecessary in this case;

**vii. The nature and number of objections to the settlement**

41. No class members have objected to the settlement;

**viii. The terms of the settlement**

42. The Settlement Agreement provides for a fair and reasonable level of compensation for class members;

43. The Settlement provides for an average amount of \$100,000 per class member;

44. The settlement agreement in the *Sebastian* case provided for similar compensation, as appears from section 2.3 of this settlement agreement, Exhibit P-3;

45. The *Sebastian* settlement agreement was approved by the Honourable Chantal Corriveau, j.s.c., the whole as appears from a copy of her judgment, Exhibit P-4;

46. Furthermore, the compensation grid found at Schedule G to the Settlement Agreement (Exhibit P-1) is a *verbatim* reproduction of the compensation grid that was elaborated for the purposes of the *Sebastian* case (see Exhibit P-3, Exhibit B);

47. The *Sebastian* compensation grid was designed by a psychologist with extensive experience in treating victims of childhood sexual abuse;

48. The confidential claims process provided for by the Settlement Agreement is also to the benefit of class members;

49. Class members will be able to claim under the agreement without being subject to cross-examination;

50. Many class members have never told anyone other than Class Counsel of the abuse they suffered;

51. In sum, the Settlement Agreement provides for compensation in keeping with the harm suffered by class members without running the risk of

worsening this harm by forcing class members to relive the abuse in the context of testimony or otherwise;

### C. THE APPLICANT ATTORNEYS' FEES ARE FAIR AND REASONABLE

52. The following criteria have been developed by the jurisprudence in order to determine whether class counsel's fees are fair and reasonable:

- i. Time and effort expended by the attorneys on the litigation;
- ii. The importance of the class action;
- iii. The degree of difficulty of the class action;
- iv. Class counsel's experience;
- v. Whether class counsel's services required expertise in a specific field;
- vi. The responsibilities assumed by class counsel;
- vii. The result obtained;

53. The Applicant Attorneys' "Agreement on Extrajudicial Fees" with the Applicant provides, at section 2, that the Applicant Attorneys are entitled to 20% of the amounts obtained for class members by way of a settlement concluded before authorization of the class action;

54. The Applicant Attorneys submit that these fees are fair and reasonable in light of the abovementioned criteria;

- i. **Time and effort expended by the attorneys on the litigation**

55. The Applicant's motion for authorization to institute a class action was filed on June 5<sup>th</sup>, 2015;

56. The Settlement Agreement was thus reached relatively quickly compared to many other class actions;

57. The Applicant Attorneys nonetheless worked over 650 hours on this file, for a total value of \$ 277,683.25 at their current hourly rates, the whole as



appears from a copy of the Applicant Attorneys' timesheet for the present file, Exhibit P-5;

58. Furthermore, the Applicant Attorneys will be representing all class members throughout the claims process;

ii. The importance of the class action

59. This class action has allowed class members to achieve some semblance of justice for the horrible treatment that they endured and its often lasting consequences;

60. As will be demonstrated by the testimony of a class member's mother at the approval hearing, these consequences were often lifelong and immense;

61. This case has also contributed to raise awareness around the important social issue of childhood sexual abuse;

iii. The degree of difficulty of the class action

62. As was mentioned above, class members may have faced prescription issues under articles 2904 and 2926.1 of the *Civil code of Québec*;

63. Consequently, a significant risk was taken on by the Applicant Attorneys in accepting this mandate;

iv. Class counsel's experience and expertise in a specific field

64. M<sup>es</sup> Philippe Trudel and Bruce Johnston have specialized in class actions and public interest litigation since founding the law firm Trudel & Johnston in 1998;

65. In May of 2015, M<sup>es</sup> Trudel and Johnston welcomed André Lespérance as a new partner, and their firm was renamed Trudel Johnston & Lespérance. M<sup>e</sup> Lespérance has over 20 years' experience in class actions, notably with the Department of Justice of Canada and with the law firm Lauzon Bélanger Lespérance;

66. M<sup>e</sup> Yves Lauzon Ad.E, who is widely regarded as a pioneer in class action litigation in Québec, also joined the Applicant Attorneys in the 2015;

67. M<sup>e</sup> François Lebeau, also one of the most experienced class action litigators in Québec, recently joined the Applicant Attorneys' firm;

68. M<sup>es</sup> Lauzon, Lebeau, Trudel, Johnston and Lespérance's experience in class actions adds up to well over 100 years;
69. The Applicant Attorneys have won at the trial level in all ten (10) of their class actions that have reached the merits' stage, and many of these judgments set important precedents;
70. The Applicant Attorneys' experience in a wide variety of class actions was beneficial to class members in this litigation;

v. The responsibilities assumed by class counsel

71. The Applicant Attorneys agreed to be paid only if compensation was recovered for class members;
72. The Applicant Attorneys guaranteed that neither the Applicant nor class members would be charged any fee whatsoever unless and until a favorable result was obtained;

vi. The result obtained

73. For the reasons outlined above, the Applicant Attorneys believe that the Settlement Agreement is a very favorable result for class members;

---

D. APPLICATION OF ART. 42 OF THE *ACT RESPECTING THE FONDS D'AIDE AUX ACTIONS COLLECTIVES*

74. The Settlement Agreement provides for collective recovery of class members' claims for the purposes of art. 42 of the *Act respecting the Fonds d'aide aux actions collectives*, ch. F-3.2.0.1.1.

E. APPROVAL OF THE APPLICANT'S EXPENSES

75. The Applicant requests that his expenses related to this case, which include his expenses related to travel from Los Angeles to Montreal, be reimbursed from the Total Settlement Fund;
76. The Applicant's expenses will be documented at the hearing of this application;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

APPROVE the Settlement Agreement, and ORDER the parties to respect its terms;

ORDER that notice of the Settlement Agreement be given to class members in the manner provided for at section 4.2 of the Settlement Agreement;

APPROVE the "Professional Appointment and Agreement on Extrajudicial Fees" concluded by the Applicant and the Applicant Attorneys;

DECLARE that the Applicant Attorneys are entitled to extrajudicial fees in the amount of 20% of the Total Settlement Fund, before deduction of disbursements;

DECLARE that the Applicant Attorneys are entitled to reimbursement of disbursements in the amount of \$ 619.26, said disbursements to be deducted from the Total Settlement Fund;

ORDER the Applicant Attorneys to retain from any balance the percentage provided for in the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* (ch.F-3.2.0.1.1, r. 2) for the benefit of the Fonds d'aide aux actions collectives;

DECLARE that the Applicant is entitled to reimbursement of his expenses related to this case, to be deducted from the Total Settlement Fund;

THE WHOLE, without legal costs.

Montreal, April 25<sup>th</sup> 2017

  
TRUDEL JOHNSTON & LESPÉRANCE  
Counsel for the Applicant

AFFIDAVIT OF ANDRÉ LESPÉRANCE

---

I, the undersigned, ANDRÉ LESPÉRANCE, lawyer, practicing with the law firm Trudel Johnston & Lespérance, being duly sworn, state as follows:

1. I am one of the attorneys for the Applicant in the present file;
2. All the facts alleged in the present *Application to approve a class action settlement and for approval of class counsel's fees* are true;

AND I HAVE SIGNED:

  
\_\_\_\_\_  
ANDRÉ LESPÉRANCE

Sworn before me  
in Montreal, this 25<sup>th</sup> of April 2017



COMMISSIONNER FOR OATHS



NOTICE OF PRESENTATION

---

A : M<sup>e</sup> Kurt A. Johnson  
M<sup>e</sup> Raphaël Lescop  
M<sup>e</sup> Francis Legault-Mayrand  
*Irving Mitchell Kalichman*  
Place Alexis Nihon | Tour 2  
3500, boulevard De  
Maisonneuve Ouest  
Bureau 1400  
Montréal (Québec) H3Z 3C1

M<sup>e</sup> Frikia Belogbi  
*Fonds d'aide aux actions collectives*  
Palais de justice  
1, rue Notre-Dame Est, bureau 10.30  
Montreal, QC, H2Y 1B6

TAKE NOTICE that the present *Application to Approve a Class Action Settlement and for Approval of Class Counsel's Fees* will be presented before the Honourable Marc De Wever of the Superior Court of Quebec, in the city and district of Montreal, at the Montreal Courthouse on **May 1<sup>st</sup>, 2017, at 9:30 AM**, in a room to be determined.

PLEASE ACT ACCORDINGLY

Montreal, April 25<sup>th</sup>, 2017

  
TRUDEL JOHNSTON & LESPÉRANCE  
Counsel for the Applicant

No.: 500-06-000743-159

---

SUPERIOR COURT (Class Action)  
DISTRICT OF MONTREAL

---

**BENEDICT MATTHEW BISSONNETTE**  
Applicant

v.  
**CITY OF WESTMOUNT**  
Respondent

-and-  
**FONDS D'AIDE AUX ACTIONS COLLECTIVES**  
Impleaded Party

-and-  
**TRUDEL JOHNSTON & LESPÉRANCE**  
Applicant Attorneys

Our file: 1336-1                      BT 1415

---

**APPLICATION TO APPROVE A CLASS ACTION  
SETTLEMENT AND FOR APPROVAL OF CLASS  
COUNSEL'S FEES**

(Articles 590, 591 & 593 C.p.c. and article 32 of the  
*Act respecting the Fonds d'aides aux actions  
collectives*)

---

**ORIGINAL**

Name of attorneys : M<sup>e</sup> André Lespérance  
M<sup>e</sup> Jean-Marc Lacourcière

**TRUDEL JOHNSTON & LESPÉRANCE, S.E.N.C.**  
750, Côte de la Place d'Armes, bureau 90  
Montréal (Québec) H2Y 2S8  
Tél. : 514 871-8385  
Fax : 514 871-8800