

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE PAUL M. PERELL)

WEDNESDAY, THE 27th
DAY OF JULY, 2018

BETWEEN:

SARAH DOUCET and L.K.

Plaintiffs

- and -

THE ROYAL WINNIPEG BALLET (carrying on business as
the Royal Winnipeg Ballet School) and BRUCE MONK

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding, was heard on June 7, 2018 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the following materials, filed: the Affidavit of John Kingman Phillips, sworn September 14, 2017; the Affidavit of Sarah Doucet, sworn September 16, 2017; the Affidavit of L. K., sworn September 16, 2017; the Affidavit of Alanna Jones, sworn September 20, 2017; the Affidavit of Victoria May, sworn September 21, 2017; the Affidavit of Serena McCarroll, sworn September 19, 2017; the Affidavit of Dr. Mary Anne Franks, sworn October 30, 2017; the Affidavit of John D. Snowdy, sworn November 3, 2017;; the Certification Factum and Reply Factum of the Plaintiffs; the Responding Certification Facta of the Defendants; and the Books of Authorities of the parties; and,

ON HEARING the submissions of Class Counsel and the lawyers for the Defendants, and **ON READING** the Supplementary Affidavit of Sarah Doucet (Class Size), sworn June 14, 2018; and the Affidavit of Patti Shedden (Class Size), sworn June 14, 2018:

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992 (CPA)*.

2. **THIS COURT ORDERS** that the classes are defined as:

All persons who attended the Royal Winnipeg Ballet School (the School) from 1984 to 2015 and who, while enrolled at the School, were photographed by Bruce Monk in a private setting (the Student Class); including a subclass of:

All members of the Student Class whose intimate photographs taken by Bruce Monk were posted on the internet, sold, published or otherwise displayed in a public setting (the Privacy Subclass); and

All dependants of members of the Student Class, as defined by section 61 of the Family Law Act, R.S.O. 1990, c. F.3 (the Family Class).

3. **THIS COURT ORDERS** that the following causes of action are asserted on behalf of the class: negligence, vicarious liability, breach of fiduciary duty, breach of contract, breach of trust, intrusion upon seclusion, breach of confidence, public disclosure of private facts, unjust enrichment, sexual assault and sexual abuse, privacy statute violations, and dependants' derivative claims under s. 61 of the *Family Law Act*.

4. **THIS COURT ORDERS** that Sarah Doucet is appointed as the Representative Plaintiff for the Student Class and that L.K. is appointed as the Representative Plaintiff for the Family Class.
5. **THIS COURT ORDERS** that the following issues are certified as common to the Class:

Negligence

- a) Did Mr. Monk owe a duty of care to the Student Class?
- b) If the answer to (1) is yes, what is the applicable standard of care?
- c) Did the Royal Winnipeg Ballet owe a duty of care to the Student Class?
- d) If the answer to (3) is yes, what is the applicable standard of care?

Breach of Fiduciary Duty and Breach of Trust

- e) Did Mr. Monk owe a fiduciary duty to the members of the Student Class?
- f) Did the Royal Winnipeg Ballet owe a fiduciary duty to the members of the Student Class?
- g) Was Mr. Monk a trustee of the Student Class with respect to the intimate photographs, and if so, did he breach the duty of trust imposed upon him with respect to maintaining the confidentiality of the photographs?

Breach of Contract

- h) Was it an express and/or implied term of the Student Class' contracts with the Royal Winnipeg Ballet, that the Royal Winnipeg Ballet would take all reasonable steps to safeguard the safety, security and well-being of the Student Class while attending the Royal Winnipeg Ballet School?

Breach of Confidence

- i) Were the intimate photos of the Student Class members taken by Mr. Monk confidential?
- j) If the answer to (9) is yes, did the circumstances in which the photographs were taken import an obligation of confidence upon Mr. Monk?
- k) If the answer to (10) is yes, was posting the intimate photos of the Privacy Subclass on the internet, selling the photographs, or otherwise publishing or displaying the photographs in public an unauthorized use of the photos?

Intrusion Upon Seclusion

- l) Did Mr. Monk invade, without lawful justification, the private affairs or concerns of the members of the Student Class?
- m) Would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?

Public Disclosure of Private Facts

- n) Would the publication, public display, posting on the internet and/or sale of the intimate photographs of the Privacy Subclass be highly offensive to a reasonable person of ordinary sensibilities?
- o) Was the publication, public display, posting on the internet and/or sale of the intimate photographs of the Privacy Subclass of legitimate concern to the public?

Privacy Statutes

- p) Has Mr. Monk violated the privacy of the Student Class or the Privacy Subclass under:
 - a. section 2(1) of *The Privacy Act*, C.C.S.M. c. P125,
 - b. sections 1 and 3 of the *Privacy Act*, RSBC 1996 c. 373,

- c. section 2 of *The Privacy Act*, RSS 1978, c. P-24,
 - d. section 3 of the *Privacy Act*, RSNL 1990 c. P-22, and/or
 - e. sections 3 and 35-37 of the *Civil Code of Quebec*, CQLR c CCQ-1991?
- q) Has Mr. Monk breached section 11(1) of the *Intimate Image Protection Act*, CCSM c. I87 with respect to the Privacy Subclass?
 - r) If the answer to (q) is yes, is the Privacy Subclass entitled to damages, including general, special, aggravated and or punitive damages?
 - s) If the answer to (q) is yes, is Mr. Monk required to account to the Privacy Subclass for all the profits that have accrued to him as a result of the non-consensual distribution of the Privacy Subclass' intimate images, pursuant to s. 14 of the *Intimate Image Protection Act*, CCSM c. I87?

Vicarious Liability

- t) Would the Royal Winnipeg Ballet be vicariously liable for the wrongful conduct of its employee, Mr. Monk?

Family Law Act Dependents Liability

- u) Is either Mr. Monk or the Royal Winnipeg Ballet liable to the Family Law Class for any damages they have incurred pursuant to s. 61 *Family Law Act*, RSO 1990, c. F.3?

Punitive Damages

- v) Does the conduct of Mr. Monk justify an award of punitive, exemplary and/or aggravated damages?
 - w) Does the conduct of the Royal Winnipeg Ballet justify an award of punitive, exemplary and/or aggravated damages?
6. **THIS COURT ORDERS** that class members may opt out of this class proceeding by delivering an election to opt-out in accordance with paragraph 8, below, by no later than

ninety (90) days after the date of the first publication of the notice of certification of the action as a class proceeding, after which time no member of the class may opt out of this proceeding, except by court order.

7. **THIS COURT ORDERS** that the Notice of Certification of Action as a class proceeding shall be in a form to be approved by the court at a further case conference to be scheduled by the parties;
8. **THIS COURT ORDERS** that the Notice Program with respect to the publication of the Notice of Certification is approved, as follows:
 - a) Class Counsel will publish a national press release in English and in French advising of the certification of the action as a class proceeding, and include links to both the Notice and the firm's web page dedicated to the proceeding;
 - b) Class Counsel will deliver the Notice by email or mail to any Class member who has provided their email or mailing address to Class Counsel;
 - c) Class Counsel will post an update to their firm website advising of the certification of the action and explaining its import, and include a link to a copy of the Notice;
 - d) Class Counsel will post/tweet/link the Notice to their LinkedIn and Twitter accounts;
 - e) Class Counsel will create a dedicated Facebook page for the class action, on which the Notice will be posted, as well as relevant information regarding the class proceeding, which will be updated from time to time, and through which Class members will be able to provide secure, privileged messaging with Class Counsel;
 - f) the representative plaintiff, Sarah Doucet, will post the Notice on her personal Facebook page;

- g) The Royal Winnipeg Ballet will post the Notice on the “News” page of its website at <https://www.rwb.org/news> for the duration of the opt-out period, at its own expense;
- h) The Royal Winnipeg Ballet will undertake best efforts to locate a last known email address or address for all current and former students who attended the School during the class period (“the Students”). With respect to the addresses located for those Students who attended the School during the class period, the Royal Winnipeg Ballet shall mail or email a copy of the Notice to the last known available address of the Students with the cost of said mailings to be shared on a 50/50 basis between the Plaintiffs and the Royal Winnipeg Ballet;
- i) Bruce Monk will post a copy of the Notice on his website <http://www.brucemonk.com/> , for the duration of the opt-out period, at his own expense; and,
- j) Class Counsel will publish a copy of the Notice in the magazine *The Dance Current* [<http://www.thedancecurrent.com/>], both in hard copy and the digital version during the notice period.

9. **THIS COURT ORDERS** that an opt-out procedure is approved as follows:

- a) a Class member may opt out of this class proceeding by sending a written election, signed by the class member (including where appropriate an electronic signature) by regular mail, fax, email, or courier, before the opt-out date fixed by the Court, to:

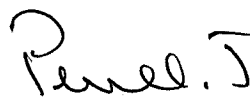
WADDELL PHILLIPS PROFESSIONAL CORPORATION
36 Toronto Street, Suite 1120
Toronto, Ontario
M5C 2C5

fax: 416.477.1657

ATTN: RWB Class Action

reception@waddellphillips.ca

- b) where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Waddell Phillips;
- c) any putative members of the Class who validly opt-out of the Action by the Opt-Out Deadline, in accordance with paragraph 6 of this Order, are not bound by any judgment or by the terms of any future settlement, compensation, or benefits derived from this action, and shall no longer participate in or have the opportunity in the future to participate in this action or any future settlement or compensation arising from it; and
- d) this Order is binding upon each member of the Class who does not validly opt-out from this Action on or prior to the Opt-Out Deadline in accordance with paragraph 6 of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
10. **THIS COURT ORDERS** that no information other than the Notice will be disseminated by the defendants regarding the class proceeding during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court; and,
11. **THIS COURT ORDERS** that, on consent, the costs of the motion are payable to the Plaintiffs by the Defendants, fixed in the amount of \$135,000, all inclusive.

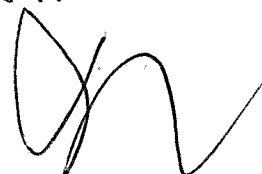


The Honourable Justice P. M. Perell

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 17 2018

PER / PAR:



SARAH DOUCET and L.K.
Plaintiffs

-and-

THE ROYAL WINNIPEG BALLET and BRUCE MONK
Defendants

Court File No. CV-16-564335-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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