

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

SUPERIOR COURT
(Class actions)

N°: 500-06-

A.B., electing domicile for the purposes of the present application at the office of his attorneys, at 2328 Ontario Street East, in the city and district of Montreal, province of Quebec, H2K 1W1

Applicant

v.

**CORPORATION ARCHIÉPISCOPALE
CATHOLIQUE ROMAINE DE
MONTREAL**, a legal person having its head office at 2000 Sherbrooke Street West, in the city and district of Montreal, province of Quebec, H3H 1G4

and

**L'ARCHEVÊQUE CATHOLIQUE
ROMAIN DE MONTREAL**, a legal person having its head office at 2000 Sherbrooke Street West, in the city and district of Montreal, province of Quebec, H3H 1G4

Respondents

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO REPRESENT THE CLASS**

In support of his application, the applicant respectfully declares as follows:

- 1. The applicant wishes to institute a class action on behalf of the people in the following group, of which he is himself a member, namely:**

"All persons who have been sexually assaulted, and the heirs and successors of persons who have been sexually assaulted, in Quebec by any subordinate of the

Corporation archiépiscopale catholique romaine de Montréal or of L'Archevêque catholique romain de Montréal during the period from 1940 to today."

2. The facts that justify an individual claim by the applicant against the respondents are:

- 2.1 The respondent Corporation archiépiscopale catholique romaine de Montréal is a legal person incorporated on May 30, 1849, pursuant to an act of Parliament and registered in Quebec on March 28, 1995, the whole as it appears in a copy of the information report in the Quebec Enterprise Register that is included in support of the present application, exhibit **R-1**.
- 2.2 The respondent L'Archevêque catholique romain de Montréal is a legal person incorporated on September 15, 1950, pursuant to the *Roman Catholic Bishops Act* and registered in Quebec on February 11, 1995, the whole as it appears in a copy of the information report in the Quebec Enterprise Register that is included in support of the present application, exhibit **R-2**.
- 2.3 As appears in exhibits **R-1** and **R-2**, the president of the respondents is the Archbishop of Montreal, his grace Christian Lépine and the respondents share the same head office and jointly manage the activities of the diocese of Montreal and of their subordinates.
- 2.4 The respondents have the power, inter alia, to determine their subordinates' work sites, to relieve them of their duties and to impose disciplinary measures.
- 2.5 The respondents are liable for all of their subordinates' acts.
- 2.6 The respondents have been present and are always present in numerous municipalities within the greater Montreal region.
- 2.7 The respondents' subordinates took vows of poverty, of chastity and of obedience for the benefit of the respondents.
- 2.8 Abbot Brian Boucher is a priest and a subordinate of the respondents.
- 2.9 He held this role in ten Montreal churches between 1985 and 2015, as well as in churches in Dorval and Senneville, in addition to serving as a chaplain at McGill University.

THE APPLICANT

- 2.10 The applicant is a 33-year-old man.
- 2.11 He was sexually assaulted by the Abbot Brian Boucher from the ages of 10 to 13 years old.

- 2.12 These assaults took place between 1995 and 1999 while the Abbot Brian Boucher was the vicar of the St. John Brébeuf parish in Lasalle.
- 2.13 The applicant's family had absolute confidence in Abbot Boucher, in religious authorities in general.
- 2.14 In 2016, the applicant complained to the police about Abbot Boucher.
- 2.15 In January 2017, Abbot Boucher was charged with three charges related to sexual assault, the whole as it appears from a copy of the court registry in file 500-01-149312-172 filed in support of the present application, exhibit **R-3**, and from a press release sent out by the president of the respondents on March 2, 2017, exhibit **R-4**.
- 2.16 In February 2017, Abbot Boucher was charged with seven charges related to sexual assault, the whole as it appears from a copy of the court registry in file 500-01-151291-173 filed in support of the present application, exhibit **R-5**.
- 2.17 On or about January 8, 2019, Justice Compagnone, in the first file, after a trial, found the Abbot Boucher guilty of two charges with respect to an initial victim, specifically sexual interference and invitation to sexual touching.
- 2.18 This initial victim was sexually assaulted from the ages of 12 to 15, between the years of 2008 and 2011, as he served mass at Our Lady of Annunciation parish in Mont-Royal.
- 2.19 The applicant testified at this first trial as a witness who was the victim of a similar act.
- 2.20 On or about January 21, 2019, Abbot Boucher plead guilty to the charges of sexual assault with respect to a second victim, namely the applicant.
- 2.21 On or about March 25, 2019, on a joint submission, the Abbot Boucher was sentenced to eight years in a penitentiary in the two files.
- 2.22 The applicant was unable to institute proceedings or report the assaults prior to the denunciation to the police, due to fear and guilt.
- 2.23 These sexual assaults caused the applicant, 500-01-151291-173, anxiety, trust and intimacy issues and anger, to name a few.
- 2.24 The respondent is deeply affected by these sexual assaults.
- 2.25 In light of the foregoing, the applicant has the right to claim from the respondents non-pecuniary damages in the amount of \$300,000 to compensate his suffering,

his distress, his loss of self-esteem, his shame, and his humiliation over the years.

- 2.26 In light of the foregoing, the applicant has the right to claim from the respondents \$150,000 for his pecuniary losses.
- 2.27 In light of the foregoing, and given the gravity of the intentional interference with his dignity, his physical and psychological integrity, the duration and the extent of the sexual assault and the abuse of power, the applicant has the right to claim \$150,000 from the respondents in punitive damages pursuant to the *Charter of Human Rights and Freedoms*.
- 2.28 The applicant has knowledge of two other victims of Abbot Boucher.
- 2.29 Furthermore, the respondents have established a committee of inquiry into the reality of sexual assault against minors committed by priests under their control, the whole as it appears in a copy of an article published in *LaPresse+* filed in support of the present application, exhibit **R-6**.
- 2.30 It is reasonable to believe that the Abbot Boucher and other priests produced further victims while they were subordinates of the respondents.

THE RESPONDENTS' FAULTS

2.31 The respondents are liable for the damage suffered by the applicant and the other class members due to the sexual assaults committed by their subordinates both as a result of their liability for the fault of another and for their own direct fault.

a) Liability for the fault of another

- 2.32 At all relevant times, the respondents were responsible for the management, control, and supervision of their subordinates.
- 2.33 At all relevant times, each of the respondents' subordinates vowed to obey the authority of the respondents and of their superiors, and vowed abstinence.
- 2.34 At all relevant times, the respondents appointed each of their subordinates to specific roles including parish oversight and management.
- 2.35 At all relevant times, the respondents appointed each of their subordinates to roles and to work sites where some of their subordinates committed sexual assault.
- 2.36 The relationship between the respondents and their subordinates were subject to canon law and to the civil law of Quebec.

- 2.37 The respondents could not have been unaware of the importance of the moral, civil and religious authority that each of their subordinates held over their parishioners.
- 2.38 In the eyes of the class members, the respondents' subordinates were assumed to be sources of comfort, examples to be modelled and/or spiritual and religious guides.
- 2.39 The respondents' subordinates who committed sexual assault used their position of religious authority in order to develop connections with class members, including the applicant, and wrongfully earning their trust.
- 2.40 The respondents' subordinates who committed sexual assault developed and maintained noxious and inappropriate relationships with the class members, including the applicant.
- 2.41 The respondents' subordinates who committed sexual assault knew or should have known that their behaviour was not only abusive and serious, but also totally illegal.
- 2.42 The respondents' subordinates who committed sexual assault knew or should have known that their behaviour would cause severe consequences for the class members, including the applicant, including on physical, psychological, emotional, and moral levels.
- 2.43 In doing so, the respondents' subordinates who committed sexual assault severely infringed the dignity, inviolability, and the security of the class members, including the applicant.
- 2.44 The applicant suffered wide-ranging damage that flowed directly from these abuses.
- 2.45 At all relevant times, Abbot Boucher was the respondents' subordinate.
- 2.46 The applicant thus has the right to hold the respondents liable for all the damage that he suffered following these abuses.

b) Direct liability

- 2.47 The respondents knew or should have known that Abbot Boucher was sexually assaulting children.
- 2.48 The respondents failed to ensure that Abbot Boucher and other subordinates were adequately fulfilling the duties and functions they had been assigned.

- 2.49 The respondents failed to institute any security or supervision policies or mechanisms to prevent their subordinates from committing sexual assault.
- 2.50 The respondents always held the necessary authority to remove their subordinates from their functions and tasks and thereby protect the class members, but failed to act accordingly.
- 2.51 The respondents failed to respect their own internal rules and opted instead for a culture of silence.
- 2.52 In light of the foregoing, the respondents are directly liable for the sexual assaults committed by their subordinates.

3. The facts justifying individual claims on behalf of each of the class members are:

- 3.1 Each class member was sexually assaulted by a subordinate of the respondents.
- 3.2 Each class member suffered damage as a result of these sexual assaults.
- 3.3 Although the extent of damage may differ among members, it is recognized that sexual assault victims commonly suffer from anxiety, depression, fear of authority, loss of faith, sexual and interpersonal and all manner of abuse.
- 3.4 Each class member suffered an infringement of their dignity and their physical integrity.
- 3.5 Each class member has the right to claim pecuniary, non-pecuniary and punitive damages.

4. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, in that:

- 4.1 Although the precise number of members of the group described in paragraph 1 cannot actually be established, it provides a deterministic criterion and the class members are identifiable.
- 4.2 It is impossible for the applicant to contact all of the members of the group and, *a fortiori*, to obtain a mandate from them.
- 4.3 Victims of sexual assault by members of the clergy have great difficulty in reporting the sexual assault they suffered, due notably to shame, fear of not being believed, and fear of confronting idealized institutions or people.

4.4 As such, there is a risk that numerous class members may hesitate to assert their rights related to this application if they had to institute individual proceedings.

4.5 Furthermore, the confidentiality a class action affords allows sexual assault victims to report, often for the first time, sexual assault, to obtain compensation and to initiate a healing process.

4.6 It is plain to see that subordinates of the respondents who have sexually assaulted certain people have also assaulted many others over numerous years.

5. The identical, similar or related issues of law or fact that connect each class member to the respondents that the applicant intends for the class action to determine are:

5.1 Did subordinates of the respondents sexually assault class members?

5.2 Were the respondents themselves directly at fault with respect to class members?

5.3 Did the respondents in their capacity as principals engage their liability for the sexual assaults committed by their subordinates?

5.4 In the event that the respondents had knowledge of the sexual assaults, did they act diligently to end these assaults?

5.5 Did the respondents attempt to conceal sexual assaults committed by some of its subordinates against class members?

5.6 Do class members have the right to claim an indemnity for the pecuniary and non-pecuniary injuries flowing from these abuses?

5.7 What quantum of damages (pecuniary, non-pecuniary, and/or punitive) may be established at the collective stage, and what damages must be established at the stage of individual claims, if any?

5.8 Were rights guaranteed by the *Charter of Human Rights and Freedoms* violated?

5.9 If so, what quantum of punitive damages must the respondents be ordered to pay?

5.10 Was it impossible in fact or in law to act?

6. The questions of fact and law that are specific to each class member consist of:

6.1 Was each class member sexually abused by one or more of the respondents' subordinates?

6.2 What is the nature and quantum of pecuniary and non-pecuniary damages suffered by each member?

6.3 Was it impossible in fact or in law to act?

7. It is opportune to authorize the institution of a class action on behalf of the class members.

8. The nature of the action the applicant seeks to institute on behalf of class members is:

An action in damages to compensate bodily injury (sexual assault) and punitive damages.

9. The conclusions sought are:

9.1 **ALLOW** the class action of the applicant and of the class members described in paragraph 1;

9.2 **ORDER** the respondents to pay the applicant and each of the members in the class described in paragraph 1 pecuniary, non-pecuniary and punitive damages, with the quantum to be determined subsequently;

9.3 **ORDER** the respondents to pay interest on these amounts to the applicant and each member of the class described at paragraph 1, at the legal rate, as well as the additional indemnity provided for in article 1619 of the *Quebec Civil Code*;

9.4 **ORDER** the respondents to pay the applicant's legal fees, including notice and expert fees.

10. The applicant requests that he be granted representative plaintiff status.

11. The applicant is in a position to properly represent the class members for the following reasons:

11.1 The applicant has demonstrated his willingness and availability to collaborate with and to adequately assist his attorneys in order to fulfil his role as representative, the whole in the interests of the members described in paragraph 1.

- 11.2 The applicant is prepared to invest the necessary time to accomplish all of the formalities and tasks necessary to advance the present class action.
- 11.3 The applicant, given his experience in the context of a criminal trial, is in a position to understand the steps taken by his attorneys and, when necessary, to question them.
- 11.4 The applicant undertakes to defend the interests of the class he wishes to represent with vigour and competence.
- 11.5 He has the necessary standing in the collective aspect of the action because he is a victim of sexual assault by a subordinate of the respondents, just as are the other members of the class described in paragraph 1.
- 11.6 The applicant has both the moral and emotional support of his family.
- 11.7 No conflicts of interest exist between the applicant and the class members.
- 11.8 The applicant is acting in good faith and in with the sole goal of asserting his rights and those of other members.

12. The applicant proposes that the class action be instituted before the Superior Court sitting in the district of Montreal for the following reasons:

- 12.1 The respondents' head offices are in this district.
- 12.2 The office of the applicant's attorneys is in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- ALLOW** the applicant's present application to institute a class action and to be the representative plaintiff;
- AUTHORIZE** the institution of the class action described below:

Class action in extracontractual civil liability and in damages for sexual assault.
- ORDER** the respondents to pay the applicant and each of the members in the class described in paragraph 1 pecuniary, non-pecuniary and punitive damages, with the quantum to be determined subsequently.
- APPOINT** A.B. as the representative plaintiff for the purpose of instituting the class action on behalf of the class described as follows:

"All persons who have been sexually assaulted, and the heirs and successors of persons who have been sexually assaulted, in Quebec by any subordinate of the Corporation archiépiscopale catholique romaine de Montréal or of L'Archevêque catholique romain de Montréal during the period from 1940 to today."

IDENTIFY

the primary issues of fact and law to be addressed collectively as follows:

- a) Did subordinates of the respondents sexually assault class members?
- b) Were the respondents themselves directly at fault with respect to class members?
- c) Did the respondents in their capacity as principals engage their liability for the sexual assaults committed by their subordinates?
- d) In the event that the respondents had knowledge of the sexual assaults, did they act diligently to end these assaults?
- e) Did the respondents attempt to conceal sexual assaults committed by some of its subordinates against class members?
- f) Do class members have the right to claim an indemnity for the pecuniary and non-pecuniary injuries flowing from these abuses?
- g) What quantum of damages (pecuniary, non-pecuniary, and/or punitive) may be established at the collective stage, and what damages must be established at the stage of individual claims, if any?
- h) Were rights guaranteed by the *Charter of Human Rights and Freedoms* violated?
- i) If so, what quantum of punitive damages must the respondents be ordered to pay?
- j) Was it impossible in fact or in law to act?

IDENTIFY

the associated conclusions sought as:

ALLOW	the class action of the applicant and of the class members described in paragraph 1;
ORDER	the respondents to pay the applicant and each of the members in the class described in paragraph 1 pecuniary, non-pecuniary and punitive damages, with the quantum to be subsequently determined;
ORDER	the respondents to pay the applicant and each member of the class described at paragraph 1 interest on these amounts at the legal rate, as well as the additional indemnity provided for in article 1619 of the <i>Quebec Civil Code</i> ;
ORDER	the respondents to pay the applicant's legal fees, including notice and expert fees.
DECLARE	that unless they have opted out, the class members will be bound by any judgment to be rendered in the manner established by the law;
FIX	the opt-out delay at 60 days, upon the expiration of which the members of the who have not availed themselves of the op-out shall be bound by any judgment to be rendered.
ORDER	the publication of a notice to members using terms that will be ordered by the Court and using the means indicated below, at the cost of the respondents: Two (2) publications in the following dailies: LaPresse+, The Gazette, Le Journal de Montréal, Le Journal de Québec, Le Devoir, The Globe and Mail, Le Soleil;
REFER	the file to the Chief Justice of the Court to determine the district in which the class action will have to be instituted and determine the judge who will hear it;
AUTHORIZE	the use of pseudonyms to identify members of the class in filings, exhibits and any other document inserted into the Court file, the whole to protect their identity;
ORDER	the Court clerk, in the case where the action must be instituted in another district, to transmit the file upon the decision of the Chief Justice, to the clerk in this other district.

THE WHOLE with costs to follow.

Montreal, this April 3rd, 2019

ARSENAULT DUFRESNE WEE AVOCATS s.e.n.c.r.l.
Avocats du demandeur

M^e Alain Arsenault
M^e Virginie Dufresne-Lemire
M^e Justin Wee
aa@adwavocats.com
vdl@adwavocats.com
jw@adwavocats.com
2328 Ontario Street Est
Montreal (Quebec) H2K 1W1
Telephone : (514) 527-8903
Fax : (514) 527-1410
Our file number: ADW00102-117

