

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-

(Class Action)

S U P E R I O R C O U R T

BENEDICT MATTHEW BISSONETTE, residing
and domiciled at 2508 Gardner Place, Los
Angeles, California, 91206

Petitioner

- v. -

CITY OF WESTMOUNT domiciled at 4333
Sherbrooke Street West, in the City of Montreal,
Province of Quebec, H3Z 1E2

Respondent

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

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF
QUEBEC IN THE DISTRICT OF MONTREAL, THE PETITIONER ALLEGES THE
FOLLOWING:**

The City of Westmount turned a blind eye to the disturbing and illegal behaviour of their long-time employee, John Garland, while he acted as Superintendent of the Westmount Parks and Recreation Department from 1953 to 1987. This negligence resulted in the repeated sexual assault of many children who came into contact with Garland while participating in the sports programs offered by the City of Westmount. This proceeding seeks compensation for all those who suffered due to the trauma they experienced at the hands of John Garland.

1. The Petitioner seeks the authorization of a class action, on his own behalf and on behalf of the members forming part of the Class hereinafter described:

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

Toutes les personnes qui, entre 1953 et 1987, ont été abusées sexuellement ou émotionnellement par John Garland alors qu'elles participaient aux programmes de sports et loisirs offerts par la Ville de Westmount;

2. The facts that give rise to an individual action on behalf of the Petitioner and the class members against the Respondent, are as follows:

THE RESPONDENT

- 2.1 The City of Westmount ("**Westmount**") is an affluent suburb located on the island of Montreal with a population of roughly 20,000 people;
- 2.2 Westmount is home to schools, parks, a library, an arena and swimming pool;
- 2.3 Westmount also has a Recreation Centre which offers a variety of activities to its residents throughout the year, including an extensive hockey program;
- 2.4 At the time of the alleged faults, the Department of Parks and Recreation (the "**Department**") supervised 40 hockey teams on which 600 children played, as appears from a copy of an article from the Westmount Independent, filed as Exhibit **P-1**;
- 2.5 John Garland ("**Garland**") was the Superintendent of the Department from 1953 until his retirement in 1987;

THE RESPONDENT'S FAULTS

- 2.6 At all times relevant to the present action, the Respondent was aware or should have been aware of the faults committed by its employee John Garland in the performance of his duties as Superintendent of the Department;
- 2.7 Garland was a familiar face around Westmount. The Department's hockey program was often referred to as "Johnny's League";
- 2.8 During his tenure, Garland consistently took a special interest in one or two boys each year who participated in the Department's programs;
- 2.9 Department participants and employees referred to these boys as "Johnny's Pets";
- 2.10 Garland would regularly allow these boys special access to the arena, including his personal locker located in the Department's office – an area otherwise off limits to the public;
- 2.11 Garland would also invite these boys to his apartment, formerly located in Westmount, at 4777 Sherbrooke Street West, in between Grosvenor and Roslyn avenues;

- 2.12 Garland lived alone. These visits to Garland's apartment were common knowledge among Department participants and employees, as was the special and unusual treatment accorded to "Johnny's Pets";
- 2.13 Garland often gave his Pets a ride home from the arena in his car;
- 2.14 Department employees could easily witness boys getting into Garland's car since their office windows faced directly out on the arena's parking lot;
- 2.15 By keeping Garland in a position of authority, the City permitted him to regularly and consistently maintain unusual and inappropriately close relationships with the boys he supervised;
- 2.16 By allowing Garland to coach Westmount's Pee Wee All Star hockey team for 34 years, the Respondent made it possible for Garland to commit intentional acts of abuse on the children he came into contact with;
- 2.17 The Petitioner estimates that approximately 50 boys were victims of Garland's abuse;
- 2.18 Many of these children would later develop serious psychological problems including but not limited to depression and drug or alcohol abuse;
- 2.19 The Respondent failed to prevent Garland from assaulting the participants in its programs;
- 2.20 The Respondent is therefore liable to reparation for the injuries caused by the faults of its employee in the performance of his duties;

THE PETITIONER

- 2.21 In 1971, following the divorce of his parents, the Petitioner moved with his mother and brother to 453 Grosvenor Avenue in the City of Westmount;
- 2.22 The Petitioner's father moved to California and was no longer present in the Petitioner's life;
- 2.23 In 1973, at age 8, the Petitioner began playing Novice hockey in the Westmount Parks and Recreation league;
- 2.24 In 1977, at age 12, the Petitioner began playing in the Department's Pee Wee All Star hockey team, which was coached by Garland;
- 2.25 At this time, Garland took an interest in the Petitioner and soon began inviting him to his apartment;

- 2.26 Soda, junk food, pool, darts, and video games were readily available in Garland's apartment;
- 2.27 Garland repeatedly drove the Petitioner home from the Westmount hockey arena in his car;
- 2.28 Garland also encouraged the Petitioner to store his hockey equipment in Garland's locker, located in the Department office, inside the arena;
- 2.29 In the Spring of 1978, Garland began making sexual advances toward the Petitioner who was 12 at the time;
- 2.30 While at Garland's apartment, Garland asked the Petitioner to sit on his lap in a reclining chair, where he would hug the Petitioner while rocking back and forth;
- 2.31 Garland soon began a series of massages during which the Petitioner was encouraged to stretch out on the couch while Garland massaged his feet and legs;
- 2.32 By the Fall of 1978, the massages came to include Garland touching the Petitioner's genitals, as well as masturbating the Petitioner;
- 2.33 During the abuse, the Petitioner would watch television or read adult comics, which Garland provided;
- 2.34 This sexual abuse caused the Petitioner an immense harm;
- 2.35 During the period of abuse, Garland would take the Petitioner go-karting, to hit golf balls/mini-put or out to eat meals at restaurants;
- 2.36 During the period of abuse, Garland also purchased sporting equipment for the Petitioner including a set of shin pads, a pair of hockey gauntlets, hockey sticks, hockey tape, and a baseball glove;
- 2.37 During the period of abuse, Garland hid a key near the entrance to the basement of his apartment building, so the Petitioner could have access to his apartment;
- 2.38 The abuse occurred weekly from the Spring of 1978 until the Fall of 1980, when the Petitioner was aged 12 to 14;
- 2.39 Aside from the abuse, Garland also engaged in emotional manipulation:
 - 2.39.1 Garland would tell the Petitioner that he loved him, that he meant the world to him, as well as other comments to that effect;

- 2.39.2 If the Petitioner chose to play with friends rather than spend time with Garland, he would be accused of being selfish and opportunistic;
- 2.39.3 Garland referred to these sessions as “warm ups”, implying that it would help the Petitioner prepare for hockey games;
- 2.40 This type of emotional manipulation caused the Petitioner severe distress;
- 2.41 In the Spring of 1980, the Petitioner began to resist Garland’s advances and emotional manipulation, and by the Fall of 1980 had stopped visiting Garland’s apartment altogether;
- 2.42 In the Fall of 1980, the Petitioner began playing hockey in a different part of Montreal and his contact with Garland ended;
- 2.43 The Petitioner is still not able to fully understand the implications of what Garland did to him and the damages that were caused by Garland’s actions;
- 2.44 The Petitioner suffered direct and severe injuries due to the Respondent’s failure to protect him from Garland’s advances;
- 2.45 The Petitioner is entitled to hold the Respondent responsible for these damages caused by the faults their employee committed;
- 2.46 The Petitioner evaluates the amount of non-pecuniary damages to which he is entitled, namely the psychological and moral damages caused by his relationship with Garland to be \$100 000;
- 2.47 Since the City of Westmount knew about the abuse and did nothing to end the behaviour of its employee, the Petitioner is also entitled to punitive damages in the amount of \$25 000 pursuant to s. 49 of the *Quebec Charter of human rights and freedoms* for the unlawful and intentional interference with his Charter rights;

THE 1993 COMPLAINT

- 2.48 In the spring of 1993, while a law student at Queen’s University, the Petitioner filed a criminal complaint against Garland at Westmount’s MUC Police Station 12;
- 2.49 The officer handling the complaint (“**The Officer**”) advised the Petitioner to draft a statement of facts regarding the abuse (“**The 1993 Complaint**”);

- 2.50 The Petitioner drafted a statement of facts, similar to the one outlined above, which included a statement that Garland's inappropriate behaviour was common knowledge among Department participants and employees;
- 2.51 The Officer informed the Petitioner that he had been in contact with a reporter from the Westmount Examiner, who confirmed that Garland's inappropriate behaviour was common knowledge among Department participants and employees;
- 2.52 The Petitioner and the Officer then attended a meeting with a Crown prosecutor at the Montreal courthouse, and it was decided that the case against Garland would be pursued;
- 2.53 However, in the fall of 1993, the Officer left a message with the Petitioner's college roommate, informing him that there was not enough evidence to lay charges against Garland and the case against him would be dropped;
- 2.54 Upon receiving this message, the Petitioner telephoned the Officer and requested an explanation;
- 2.55 The Officer informed the Petitioner that Westmount Police officers had questioned Garland, who had maintained his innocence and that Garland would sue the Petitioner for defamation if he pursued the matter;
- 2.56 The Officer explained that Westmount Police officers knew Garland and did not believe that the abuse had occurred;
- 2.57 The Officer explained that as the Petitioner was the sole complainant, he lacked credibility;
- 2.58 The Officer stated that the Petitioner, as a first year law student, was knowledgeable of civil litigation and was fabricating the abuse in the hope of financial gain;
- 2.59 This conversation with the Officer led the Petitioner to understand that Westmount Police were not interested in pursuing the 1993 Complaint, and, in fact, disapproved of it altogether;
- 2.60 The Petitioner then contacted the Crown prosecutor, who informed him that because the Westmount Police were reluctant to investigate the matter, there was nothing that the Crown prosecutor could do - the case was closed;
- 2.61 At the time of the 1993 Complaint, the Petitioner had not sought therapy or professional help regarding the abuse. The Westmount Police were the only professional entity contacted by the Petitioner and they failed in their duty to

- investigate the complaint and protect others. The police turned their back on the Petitioner at the moment when he needed them most;
- 2.62 The Police allowed their personal relationship with Garland and his standing in the community to improperly influence their actions;
- 2.63 Their failure to adequately investigate the complaint against Garland destroyed the Petitioner's emotional capacity to address the matter any further;
- 2.64 Almost ten years would pass before the Petitioner eventually sought treatment and began therapy in 2002. The Petitioner continues treatment to this day. After thirteen years of therapy, the Petitioner was finally able to face his drug and alcohol problem, and begin to control it. The Petitioner no longer abuses drugs or alcohol, and has been sober since March 2014;
- 2.65 It was only through his therapy that the Petitioner came to understand that the decision taken by the Westmount Police and the Crown prosecutor regarding the 1993 Complaint was unacceptable, as was the situation regarding the Department's inaction with regards to Garland's behaviour;
- 2.66 In April of 2012, following the well-publicized conviction of the hockey coach Graham James for sexual abuse against former NHL player Theoren Fleury, the Petitioner contacted the Westmount Police and enquired if there had been any further complaints against Garland with respect to the above-described events;
- 2.67 The Petitioner was informed that the Police had no record of Garland, of the Petitioner, or of the 1993 Complaint;
- 2.68 Upon hearing this, the Petitioner contacted a Montreal criminal lawyer and she agreed to assist the Petitioner to attempt once again to bring the matter of the abuse to the attention of the authorities;
- 2.69 Two months later, on June 12, 2012, John Garland died, precluding any possible criminal prosecution against him for the abuse;
- 2.70 It was only following the death of his perpetrator and the capacity the Petitioner obtained after years of therapy, that he was finally able to take action on his own behalf and on behalf of the class members;
- 3. The facts giving rise to an individual action on behalf of each class member against the Respondent are, other than the facts set out in paragraph 2 with the necessary adaptations, the following:**

- 3.1 Each class member was a participant in the Department's programs while Garland was an employee there;
- 3.2 Each class member had an encounter and a relationship with Garland;
- 3.3 Each class member was sexually and/or mentally abused by Garland;
- 3.4 Each class member suffered psychological and moral damages as a result of their encounter and/relationship with Garland;
- 4. The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impracticable in that:**
 - 4.1 During the time period covered by the present action, approximately 600 children enrolled in the Department's programs each year;
 - 4.2 It is impossible to know the identity of all the persons who participated in the Department's programs between 1953 and 1987;
 - 4.3 It is impossible to know the identity of all the persons who were victims of Garland's actions;
 - 4.4 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 Petitioner seeks the following questions of fact or law, which are identical, similar or related and unite each class member, decided by a class action:**
 - 5.1 Did the Respondent commit faults in omitting to prevent the actions of their employee Garland and the damages that resulted from his actions?
 - 5.2 Is the Respondent liable for the faults of its employee carried out in the performance of his duties?
 - 5.3 What are the nature and the amount of the damages that the class members can claim from the Respondent?
- 6. The questions of fact and of law particular to each class member consist of:**
 - 6.1 What is the severity of the damages suffered?
 - 6.2 What amount must the Respondent pay in compensatory damages to each class member?
- 7. It is appropriate to authorize a class action on behalf of the class members for the following reasons:**

7.1 Only the institution of a class action will provide the class members with reasonable access to justice;

7.2 The cost of bringing each individual action would disproportionately exceed the amount sought by each member against the Respondent;

8. The nature of the action the Petitioner intends to bring on behalf of the class members is:

8.1 An action in compensatory and punitive damages;

9. The conclusions the Petitioner seeks are the following:

ORDER the Respondent to pay to the Petitioner the amount of one hundred thousand dollars (\$100 000) in damages, for the psychological and moral injuries incurred;

ORDER the Respondent to pay to the Petitioner the amount of one hundred thousand dollars (\$25 000), in punitive damages;

ORDER the Respondent to pay to each class member an amount to be determined as compensation for the psychological and moral injuries incurred;

ORDER the collective recovery of all the punitive damages to be paid to members of the Class, in the amount of \$25 000 per member;

ORDER the collective recovery of member claims for the non-pecuniary damages;

ORDER the Respondents to pay each member of the Class their respective claims, plus interest at the legal rate as well as the additional indemnity provided for by law in virtue of article 1619 C.C.Q.;

THE WHOLE with costs at all levels, including the cost of all exhibits, experts, expert reports and notices;

10. The Petitioner is in a position to adequately represent the class members adequately and this for the following reasons:

10.1 The Petitioner is a class member;

10.2 The Petitioner has the time, energy, will and determination to assume all responsibilities incumbent upon him in order to diligently carry out the action;

10.3 The Petitioner is committed to collaborating fully with his attorneys;

- 10.4 The Petitioner has provided his attorneys with information useful to the present class action;
- 10.5 The Petitioner acts in good faith with the only goal of obtaining justice and compensation for himself and each class member;
- 10.6 The Petitioner is represented by an experienced law firm that specializes in class actions;

11. The Petitioner proposes that the class action be carried out before the Superior Court of the district of Montreal for the following reasons:

- 11.1 The Respondent is domiciled in the district of Montreal;
- 11.2 Attorneys for the Petitioner have their offices in the district of Montreal;
- 11.3 An important part of the class members reside in the district of Montreal and its surroundings;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Petitioner's motion;

AUTHORIZE the class action hereinafter described as:

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

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

Did the Respondent commit faults in omitting to prevent the actions of their employee Garland and the damages that resulted from his actions?

Is the Respondent liable for the fault of its employee carried out in the performance of his duties?

What are the nature and the amount of the damages that the class members can claim from the Respondent?

IDENTIFY as follows the conclusions sought in relation thereof:

ORDER the Respondent to pay to the Petitioner the amount of one hundred thousand dollars (\$100 000) in damages, for the psychological and moral injuries incurred;

ORDER the Respondent to pay to the Petitioner the amount of one hundred thousand dollars (\$25 000), in punitive damages;

ORDER the Respondent to pay to each class member an amount to be determined as compensation for the psychological and moral injuries incurred;

ORDER the collective recovery of all the punitive damages to be paid to members of the Class, in the amount of \$25 000 per member;

ORDER the collective recovery of member claims for the non-pecuniary damages;

ORDER the Respondents to pay each member of the Class their respective claims, plus interest at the legal rate as well as the additional indemnity provided for by law in virtue of article 1619 C.C.Q.;

DECLARE that, unless excluded, the members of the class will be bound by all judgments to be rendered with respect to the class action in accordance with the law;

FIX the delay for exclusion from the Class at sixty (60) days from the date of the notice to the members, after which those members which did not avail themselves of their option to be excluded shall be bound by all judgments to be rendered with respect to the class action;

ORDER the publication of a summary notice (in accordance with article 1046 C.C.P.) to the members of the Class according to the terms to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and to designate the Judge who shall preside over the hearing;

THE WHOLE with costs, including the cost of all notices;

MONTREAL, June 4 2015

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Attorneys for the Petitioner

TRUE COPY

TRUDEL JOHNSTON & L'ESPÉRANCE

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-

(Class Action)

S U P E R I O R C O U R T

BENEDICT MATTHEW BISSONETTE

Petitioner

- v. -

CITY OF WESTMOUNT

Respondent

NOTICE OF PRESENTATION

CITY OF WESTMOUNT

4333 Sherbrooke Street West,
Westmount, (Quebec) H3Z 1E2

NOTICE IS HEREBY GIVEN that the present *Motion for Authorization to Institute a Class Action and Obtain the Status of Representative* will be presented for adjudication before this Honourable Court sitting in and for the District of Montreal, at the Palais de Justice, located at 1, Notre-Dame E., on the date set by the coordinating judge of the class actions chamber.

PLEASE ACT ACCORDINGLY

MONTREAL, June 4 2015

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE

Attorneys for the Petitioner

TRUE COPY

TRUDEL JOHNSTON & LESPÉRANCE

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DISTRICT OF MONTRÉAL
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CITY OF WESTMOUNT

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NOTICE OF DISCLOSURE OF EXHIBITS
(C.C.P. art. 331.2(3))

In support of his *Motion for Authorization to Institute a Class Action and Obtain the Status of Representative*, the Petitioner discloses the following exhibits:

Exhibit P-1 Copy of an article from the *Westmount Independent*;

MONTREAL, June 4 2015

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Attorneys for the Petitioner

TRUE COPY

TRUDEL JOHNSTON & LESPÉRANCE