SUPERIOR COURT
(Class Actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000310-058
500-06-000335-063
500-06-000336-061

DATE: January 13, 2009

THE HONOURABLE PIERRE-C. GAGNON J.S.C.

M.G.
and
G.M.
Petitioners
v.
L'ASSOCIATION SELWYN HOUSE
Respondent

D.J.
and
C.C.
Petitioners
v.
L'ASSOCIATION SELWYN HOUSE
and
JOHN AIMERS
Respondents

T.Y.
and
M.T.
Petitioners
v.
L'ASSOCIATION SELWYN HOUSE
Respondent

and

THE GLOBE AND MAIL, a division of CTVglobemedia Publishing Inc.

and
CTV INC.
Interveners

JUDGMENT ON AUTHORIZATION TO INSTITUTE CLASS ACTIONS AND FOR APPROVAL OF THE AMENDED SETTLEMENT ("SETTLEMENT ORDER")

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[1] By interlocutory judgment on August 5, 2008, this Court dismissed the *Motion for Approval of a Settlement* of April 22, 2008 ("the judgment of August 5").

[2] On September 22, the Petitioners made a new *Motion for Approval of Amended Settlement*, dated September 15, 2008 ("the New Motion").

[3] If this Court is to grant this motion, it must also authorize the institution of the three class actions, for the sole purpose of approving and implementing the Amended Settlement Agreement ("the Amended Agreement").

[4] The Court needs to deal first with the approval of the amended settlement.

MOTION FOR APPROVAL OF THE AMENDED SETTLEMENT AGREEMENT

[5] The Court considers that the following excerpts from the judgment of August 5 state the core reasons why the settlement agreement was disapproved at the time:

> 45. But something even more fundamental is amiss: the principle of holding court files that are open to the public and to the individuals concerned, especially those files related to class actions.

46. As we read in the underlined segments of Schedule B (summary of the settlement) in paragraph [25] above, group members who do not opt out and choose to file a claim embark on a process without knowing what specific amounts they may be entitled to, if their individual claims are successful.

47. If they sign the confidentiality agreement and are given access to the information contained in Schedule F(a) or F(b), and then consider that the indemnity negotiated on their behalf is disappointingly low, there is no going back. It is too late for them to opt out.

48. Even worse, at the time of the hearing on April 25, 2008 and as this judgment is being prepared, putative group members (such as W.W.) have no access to Schedules F(a) and F(b), have no indication as to their contents, but are nonetheless being advised to speedily decide whether they will opt out or be deemed to have joined the class action.

49. The parties are emphatic that the limits for individual compensation stated in Schedules F(a) and F(b), must be kept confidential, as provided in sections 28 and 30 of the Settlement Agreement.

50. Their only explanation can be found in paragraph 64 of Petitioners' factum, where it is argued as follows:

> 64. It is submitted that all of these (confidentiality) safeguards ensure that only potential student claimants and potential family claimants receive the information regarding potential compensation so as to guard against fraud.

51. The argument is flawed and unconvincing.

. . . . .

58. Still, the present wording of sections 28 and 30 is unfair to the group members.

. . . . .

> 63. As emphasized in the case law cited above, the Court can and will ratify a settlement agreement only if it is fair and in the best interests of the group members, and if it does not contravene the law nor public order.
>
> . . . . .
>
> 67. In Quebec as in many other jurisdictions, the right of group members to opt out is an essential component of the class action process. Otherwise, this would give group representatives the exorbitant power to bind individuals without any mandate to do so, without their consent and often without their knowledge.
>
> 68. Group members can validly decide whether to opt out after they have received <u>all</u> the information available, that is as much information as is provided to group representatives and their counsel.
>
> . . . . .
>
> 70. Therefore, the Court cannot and will not approve the Settlement Agreement as filed. Even though it may very well be fair, equitable and in the best interests of group members, it contravenes public order.
>
> 71. The parties may decide to modify their Settlement Agreement in a way that will be acceptable to the Court.

[6] In making the "New Motion", the parties jointly submitted that the Court misread the initial agreement, that they never meant to prevent any claimant from opting out after having accessed the information contained in Schedule F(a) or F(b) (« the Schedules »).

[7] In any event, the parties have executed the "Amended Agreement", with various additions designed to clarify the right of a claimant to opt out of the settlement, even after gaining access to the confidential information contained in the Schedules.

[8] For instance:

(a) the Amended Agreement contains a new sentence and a new subsection 32(c) reading as follows:

> Schedule G(a) may be submitted to Class Counsel effective immediately.
>
> . . . . .
>
> (c) execution and submission of forms G(a) and G(b) do not affect in any way a Student Class Member's Rights to opt out of the settlement.

(b) section 84 of the Amended Agreement provides for Explanatory Notes (Schedule M), themselves containing the following paragraph:

> Completing and sending a Confidentiality Agreement does not mean you have elected to submit a claim or opt-out of the settlement. To be eligible to obtain compensation, you must submit a completed Claim Form before the Opt-Out Deadline (section 32);

(c) the Notice of Settlement (Schedule B) contains an additional statement:

> Execution and submission of forms G(a) and G(b) do not affect in any way Student Class Members' Rights to opt out of the Settlement.

(d) the Request Forms (schedules G(a) and G(b)) contain an added paragraph:

> Execution and submission of this form does not affect in any way your right to opt out of the settlement in accordance with the

> terms and conditions of the Settlement Agreement. To be entitled to benefit from the settlement, Class Members must submit a completed claims form on or before the Opt Out Deadline.

[9] One feature that remains unchanged in the Amended Agreement is the definition of the Opt Out Deadline (in part II):

> “Opt Out Deadline” means the date sixty (60) days following the Settlement Order Notice Date.

[10] The Settlement Order Notice Date is the one when the Settlement Notice is published in the newspapers designated at section 12 of the agreement.

[11] Publication must take place within 30 days after the Settlement Order, that is, the judgment of this Court approving the settlement.

[12] Therefore, once the Settlement Order is issued, a claimant[1] has a maximum of 90 days from the judgment of the Court:

Step A: To provide class counsel with a request form [Schedule G(a)];

Step B: To obtain a response from Selwyn's legal counsel;

Step C: To sign and return a confidentiality agreement [Schedule G(b) or G(c)];

Step D: To obtain from class counsel a copy of Schedule F(a) or F(b);

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1 In the reasons of this judgment, the term "claimant" refers to a "student claimant".

Step E: To file a claim form (Schedule H) or to file an opt out form (Schedule C).

[13] If, on the day following the Opt Out Deadline, the claimant has filed neither a claim form nor an opt out form, he is bound by the settlement agreement and forfeits the right to file a claim, either within the framework of the class actions or by individual legal action.

[14] Section 32 of the Amended Agreement specifies that a claimant may begin the process as soon as this Settlement Order is issued, thus providing this claimant the full 90-day (or so) window of opportunity. This claimant must be aware of the current status of the Court proceedings.

[15] Even though specific calculations would vary depending on each set of circumstances, the Court considers that a claimant in this optimal position would benefit from a period of at least a few weeks between steps D and E, as described above.

[16] However, a class member learning of the Settlement Order through the publication of the Settlement Order Notice would have a window of opportunity reduced to 60 days instead of 90 days.

[17] And of course, a class member who learns of the settlement later than the date of publication, or who decides to begin at Step A days after learning of the settlement, would have a window of opportunity of less than 60 days, maybe to the point where no significant time is left between steps D and E.

[18] In the judgment of August 5, the Court indicated that it did not accept the explanation why Schedules F(a) and F(b) must remain confidential. The Court suggested that group members should receive all information, *that is as much information as is provided to group representatives and their counsel* (paragraph [68]).

[19] The parties have decided to preserve in the Amended Agreement the same level of confidentiality about the damages ranges stated in Schedules F(a) and F(b), while stressing that, in essence, the right to opt out is preserved even while a group member proceeds with Steps A through D.

[20] The parties stress that this dispute has received ample coverage in the media, that many putative group members have exchanged information and opinions in weblogs and other websites, and that many putative group members have already identified themselves to class counsel. The parties consider that most if not all group members will be in a position to proceed very soon after the Settlement Order is issued.

[21] Petitioner T.Y. addressed the Court on September 22, 2008, and again he urged quick approval of the settlement.

[22] W.W., a putative group member, also made a statement. The judgment of August 5 summarized his objections to the settlement. On September 22, 2008, he indicated that he was no longer opposed, for fear of slowing down the resolution process. Rather, he urged that ample use be made of all mailing and e-mailing lists available to Selwyn House in order to reach out to as many alumni and parents of alumni, as possible.

[23] The Court gives these representations considerable weight, even though they emanate from parties or individuals who are very close to the judicial process and who have already decided what their next steps are to be.

[24] Again, the Court must be attentive to the rights, obligations and concerns of those putative group members who are not as close to the court file or undecided about their course of action.

[25] The French philosopher Voltaire wrote *Le mieux est l'ennemi du bien,*[2] meaning *The better is the enemy of the good*. He meant that often it is preferable to opt for a fair and reasonable outcome rather than turning down anything less than perfection.

[26] As exposed in the judgment of August 5, the Court must support the willingness of the parties to settle a class action and should approve a settlement when it is fair, equitable and in the best interests of the petitioners and of the group members they represent, unless it contravenes public order.

[27] The Court must also take into account that *Justice delayed is justice denied*. It must strive for effectiveness rather than give protracted attention to issues that, while important, are not essential to a fair outcome or to public order.

[28] The Court agrees with the following description of the balancing act to be performed:

[2] VOLTAIRE, *La Bégueule,* 1772.

> At the end of the day, after considering all of the above-listed factors, a court must determine whether the proposed settlement is a reasonable outcome for those class members who do not wish to proceed to trial. This task is not an easy one, for the directly involved parties will have chosen to reach agreement rather than pursue all of the merits of their respective positions. This leaves the court from which approval has been sought in the position of attempting to ensure that absent class members' interests are protected properly without having all of the information that a fully adversarial process would yield. At the same time, the court will not wish to be too zealous in scrutinizing a settlement for fear of discouraging adverse parties from attempting to fashion their own agreement in light of their own perceptions of their respective interests.[3]

[29] In *ACEF-Centre* v. *Bristol-Myers Squibb Co.,*[4] Denis J. approved the settlement of a class action despite the strenuous objections of group members, who told of the tragedy of living with dysfunctional breast implants. The Court relied on the legal expertise of counsel, their "passion and intelligence", their capacity to weigh the pros and cons of the settlement and to seek a reasonable outcome in a complex and difficult case.

[30] Professor Pierre-Claude Lafond relates this precedent as a commendable example of the exercise of sound judicial discretion when a settlement is submitted for ratification by the Court:

> On peut constater que le juge, s'il prête une oreille attentive aux récriminations des membres qui voudraient rejeter l'entente, place l'intérêt collectif du groupe

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3 McCARTHY TÉTRAULT, *Defending Class Actions in Canada,* CCH Canadian Limited, 2002, pages 147-48.

4 [1995] J.Q. no. 1970 (S.C.).

> nettement au-dessus des insatisfactions personnelles. Cet exemple rappelle que la procédure de recours collectif comporte de nombreux avantages dans des dossiers comme celui en l'espèce, mais qu'il existe une contrepartie aux effets bénéfiques: les intérêts et les états d'âme individuels doivent céder le pas à l'intérêt de la collectivité en cause. Dans sa sagesse et vu l'ampleur de la réparation accordée, le juge reste vigilant et choisit d'entériner le consentement à jugement, car il comprend très bien que rejeter l'entente au nom de quelques membres insatisfaits ne servirait pas l'intérêt du groupe dans un contexte précaire où se présente la chance d'être équitablement indemnisé sans avoir à subir de longs délais judiciaires, combinés à d'importantes difficultés de preuve. Loin de se montrer indifférent à leurs problèmes et à leurs souffrances, le juge prend le pari d'expliquer aux victimes les avantages du règlement et d'opter pour l'équilibre entre les intérêts en cause. Voilà, de la part de la magistrature, une belle démonstration d'une conception collective de la justice en matière de recours collectif[5].

[31] In the instant case, no one any longer objects to the settlement.

[32] The potential will always exist for group members to be left out of the compensation process, because they failed to take notice of the class action proceedings or to act diligently in accordance with the rules for compensation.

[33] The Court agrees that, in this instance, such potential is limited, as the proceedings began in late 2005 and early 2006, drew considerable attention within the community of alumni of Selwyn House and generated ample coverage from the media, well outside the Province of Quebec.

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5 P.-C. LAFOND, *Le recours collectif, le rôle du juge et sa conception de la justice*, Éditions Yvon Blais, 2006, page 183.

[34] The Court believes in the good faith of the parties to execute the settlement and in the professionalism of their counsel to assist a claimant with the successive steps leading to the filing of a claim or to the decision to opt out.

[35] The Court was reminded that Selwyn House opposes any judgment without a proper hearing, unless it is just to authorize the institution of the class actions, and again only to approve the Amended Settlement as signed on behalf of Selwyn House.

[36] In the judgment of August 5, the Court explained why the removal of the issue of extinctive prescription argues in favour of the Settlement Agreement (paras. [33] to [44]).

[37] On August 5, the Court also recognized that the Settlement Agreement is the outcome of vigorous litigation and extensive negotiations (para. [30]).

[38] The Court rules that the Amended Agreement, while imperfect, is fair, equitable and in the best interests of the overwhelming majority of the petitioners and of the group members. Public order is preserved.

[39] Therefore, the Court will approve the Amended Agreement if, beforehand, the institution of the three class actions is authorized.

[40] Only, as an added precaution, the Court will recommend, but will not order, that the Settlement Notice contain a statement, in bold print, indicating: "CAUTION! CLAIMANTS SHOULD ACT PROMPTLY, AS DEADLINES MAY INVALIDATE A CLAIM".

AUTHORIZATION OF THE INSTITUTION OF THE THREE CLASS ACTIONS

[41] It is axiomatic that a group action must be authorized before its settlement can be approved, though the two Court orders can be issued in quick succession. Indeed, how can a group action be settled if it does not yet exist?

[42] Article 1003 of the *Code of Civil Procedure* ("the *CCP*") sets the requirements for a group action to be authorized:

> **Art. 1003.** The court authorizes the bringing of the group action and ascribes the status of representative to the member it designates if of opinion that:
>
> *(a)* the recourses of the members raise identical, similar or related questions of law or fact;
>
> *(b)* the facts alleged seem to justify the conclusions sought;
>
> *(c)* the composition of the group makes the application of article 59 or 67 difficult or impracticable; and
>
> *(d)* the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately.

[43] The parties submitted jointly that when a group action is already settled authorization is a mere formality, something for the Court to do automatically.

[44] The parties cited a precedent in *Association coopérative d'économie familiale du nord de Montréal v. Hoechst Aktiengesellschaft,*[6] where Chaput J. wrote:

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6 [2002] J.Q. no. 10257 (S.C.).

> 12. Et, lorsque la transaction intervient avant que le recours ne soit autorisé, il est maintenant de jurisprudence que le tribunal peut autoriser le recours à la seule fin de permette que la transaction soit soumise à l'approbation du tribunal.

[45] Justice Chaput then relied on six judgments of the Superior Court,[7] but none from the Court of Appeal. These six judgments do not discuss the level of scrutiny required before the class action is authorized in such a context.

[46] There may indeed be cases where the legal situation is obvious, as all conditions set by Article 1003 *CCP* are met. But that is not to say that a class action can and should be authorized by mere consent of the parties, if only because a class action involves the rights and obligations of putative group members who are not fully represented in Court at the authorization stage.

[47] Some of the requirements of Article 1003 *CCP* are of a procedural nature, reflecting the wish by the legislator that a class action be reasonably manageable within the court system. These requirements become much less important if a settlement avoids a trial.

[48] Also, when the respondent settles with the petitioner, they implicitly agree that, under paragraph (b), " the facts alleged seem to justify the conclusions sought ".

[49] However, the Court must ascertain that paragraph (d) is met, and cannot blindly rely on the representation by the parties that "the member to whom <u>the court intends</u> to

[7] *ACEF-Centre and Power* v. *Bristol-Myers Squibb,* [1995] J.Q. no. 1970 (S.C.); *Pelletier* v. *Baxter Healthcare Corporation,* J.E. 98-1200 (S.C.); *Podmore* v. *Sun Life du Canada, compagnie d'assurance vie,* [1998] A.Q. no. 80 (S.C.); *Option Consommateurs* v. *Archers Daniels Midland Company,* CSM 500-06-000094-991, December 14, 2001; *Teixeira Paulo* v. *Tetra Vision Inc. and Bombardier Capital ltée,* CSM 500-06-000073-087, February 26, 2001.

ascribe the status of representative is in a position to represent the members adequately".

[50] The representatives are not selected by the petitioning counsel; rather, they are the client. Ideally, they would be designated by the group members but, as this is not realistically feasible, they are appointed by the Court.

[51] All six proposed representatives signed an affidavit in support of the original Settlement Agreement of February 18, 2008. They did so again in support of the Amended Agreement.[8]

[52] Two of the proposed representatives, T.Y. and M.G., addressed the Court on April 25, 2008. T.Y. did so again on September 22, 2008. The Court found them to be articulate, knowledgeable, capable of understanding the intricacies of a group action process, and considerate with regard to the needs and feelings of the various group members to be involved in the individual claims process. T.Y. and M.G. can interact competently with counsel.

[53] The Court recognizes T.Y. and M.G. as good representatives for their respective groups.

[54] In October 2006, Selwyn House filed a Motion requesting the eventual filing of evidence about certain statements by the proposed representative D.J.

[55] The Motion was granted in part by judgment delivered on November 13, 2006.

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[8] Exhibits P-5 to P-10.

[56] However, the evidence in question was not filed on April 25, 2008.

[57] The issue was not raised again by Selwyn House, nor by Mr. Aimers.

[58] The Court knows little about D.J., apart from the fact that he resides in a community close to New York City, and that he signed two of the affidavits mentioned above, in support of the Settlement Agreement, one of them stating:

> **3.** I have reviewed the terms of the Settlement Agreement and I have had the opportunity to discuss same with the proposed group counsel on numerous occasions, during the negotiation of the Agreement and up until its terms were finalized.

[59] The Court is satisfied that D.J. has been closely involved in the judicial process, is knowledgeable about the legal dispute and about the terms of the Settlement Agreement, and that he is a reliable representative of his group.

[60] The Court has very little information about the three other representatives, G.M. (a spouse), M.Y. (a mother) and C.C. (a spouse), but this does not raise a significant obstacle as, in all likelihood, the three other representatives, as direct victims, are to be considered the three main custodians of the Amended Settlement Agreement and of its implementation.

[61] Therefore, despite the reluctance of counsel to fully assist the Court with the examination required at Article 1003 *CCP,* the Court finds that requirement (d) is met.

[62] On requirement (c), the Court was provided with Schedule D (under seal) about 20 alleged victims of sexual misconduct by either Leigh Seville, James P. Hill or John

Aimers. There are indications that many of the victims now reside somewhere in North America well outside the Province of Quebec. The Court is satisfied that for such a group (plus other individuals who may eventually file a claim), it would be difficult or impracticable to rely on a consensual joining of suits under Articles 19 and 67 *CCP.*

[63] The Court rules that the requirements in paragraphs (a), (b), (c) and (d) of Article 1003 *CCP* are met. All three class actions are authorized.

[64] One conclusion of the New Motion seeks to have the six Petitioners appointed as the representatives of their respective Classes for settlement purposes only.

[65] The Court is willing to appoint them, but they will remain representatives beyond the approval of the settlement.

[66] Indeed, class counsel have the six various groups as clients. It is incumbent upon the representatives to stay in touch with class counsel, to oversee the smooth and diligent execution of the Amended Agreement and to contact the Court in the event of conflicts or difficulties.

USE OF ALUMNI LISTS

[67] In subsection 12(d) of the Amended Agreement, mention is made of Selwyn House's concern "that the use of information relating to former students' addresses may constitute a breach of privacy laws".

[68] No submissions were made to the Court about this matter.

[69] Selwyn House being a private institution, the way it gathers, uses and disseminates personal information is governed by the *Act respecting the protection of personal information in the private sector*[9] (the "*Act*").

[70] Selwyn House's lists of alumni and of parents of alumni are nominative lists within the parameters of section 22 of the *Act*.

[71] Under subsection 18(6) of the *Act*, the Superior Court is one of the "bodies" having the power to compel the communication of personal information, whether contained in a nominative list or not.

[72] In *Société nationale de l'amiante* v. *Lab Chrysotile inc.*[10] and again in *9083-2957 Québec inc.* v. *Caisse populaire de Rivière-des-Prairies,*[11] the Court of Appeal referred to subsection 18(6) of the *Act* (as well as other similar provisions) and held that:

> Ces dispositions ont pour effet de soustraire le fonctionnement des tribunaux aux restrictions continues dans ce type de législation.

[73] In the *Code of Civil Procedure* (articles 1025 and 1045, in particular) the legislator has empowered the Superior Court to look after the interests of the group members and to strive for optimal communications with the same, in the full use of its inherent powers and without any limitation imposed by the *Act* or similar legislation.

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9 R.S.Q., ch. P-39.1.
10 [1995] R.J. Q. 757 (C.A.).
11 J.E. 2004-2000 (C.A.).

[74] For example, the Superior Court made appropriate use of its powers and, in the context of a class action, ordered the communication and use of nominative lists in *Pelleman* v. *Lacroix*[12] and in *Thibault v. St. Jude Medical Inc.*[13]

[75] In this instance, the Court is convinced that Selwyn House can, should and must use its lists in order to comply with Part VIII of the Amended Agreement, and thereby assist in diligently reaching out to as many group members as is reasonably possible.

PSEUDONYM ORDERS AND SEALING ORDERS

[76] In the judgment of August 5 the Court ordered, on an interim basis, that certain documents on file be confidential and remain under seal.

[77] As well, the Court affirmed the Pseudonym Orders of September 28, 2005 and February 3, 2006.

[78] No one objects to these interim orders becoming final orders. Also, the same must be done about Exhibits P-5 to P-10 attached to the New Motion.

[79] It has come to the attention of the Court that, because nobody asked, documents were left out of the interim orders, even though they identify some petitioners or their relatives by name and address.

[80] This is the case with the following documents, all appended to the affidavit of Fabrice Gouriou dated October 3, 2006:

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[12] J.E. 2008-239 (S.C.).
[13] J.E. 2006-1027 (S.C.).

- Exhibit A;
- Exhibit D;
- Exhibit E;
- Exhibit F;
- Exhibit G;
- Exhibit H;
- Exhibit I;
- Exhibit J, and its own Exhibits [A], [B] and [C].

[81] The Court will proceed as it did in the judgment of August 5. The documents listed above will remain accessible to the public, but only after the Court has blacked out any personal information allowing anyone directly or indirectly to identify any of the petitioners.

NOW THEREFORE, THE COURT:

[82] **ORDERS AND DECLARES** that for the purposes of this Order, the following definitions apply and are incorporated into this Order:

(a) ***Settlement Notice*** refers to the notice (Schedule B) to be provided in accordance with Section 12 of the Amended Agreement;

(b) ***Settlement Order Notice Date*** means the date within thirty (30) days after the Settlement Order by which the Settlement Notice (Schedule B) must be published in the designated newspapers found at Section 12 of the Amended Agreement;

(c) ***Opt Out Deadline*** means the date sixty (60) days following the Settlement Order Notice Date;

(d) ***Opt Out*** means**,** with respect to any Student Group Members, the valid submission of a duly completed and signed Opt Out form on or prior to the Opt Out Deadline as provided in paragraph 15, and with respect to a Family Group Member, the Opting Out by his or her respective related Student Group Member.

[83] **DECLARES** that the Amended Agreement attached hereto as **Exhibit P-1** is fair, reasonable and in the best interests of the Group Members and is approved, and further **ORDERS** the Parties to comply therewith;

[84] **AUTHORIZES** the institution of the class actions herein for settlement purposes only, as against the Respondents;

[85] **NAMES** McPhadden Samac Merner Barry as Class Counsel and Liebman & Associés as Quebec Agent for Class Counsel, as defined in the Amended Agreement;

[86] **APPROVES** the Amended Agreement, **DECLARES** and **ORDERS** that the Parties and the Class Members who do not Opt Out on or before the Opt Out Deadline shall be bound by and shall comply with it;

[87] **APPOINTS** Petitioners M.G. and G.M., T.Y. and M.Y. and D.J. and C.C., as the representatives for their respective Classes, until the final report is filed in accordance with section 86 of the Amended Agreement;

[88] **DEFINES** the Groups as follows:

M.G. and G.M. v. L'Association Selwyn House (500-06-000310-058)

(c) SUB-GROUP I – the Student Group

All former students of Selwyn House School who allege that they were the victims of abuse perpetrated by or with the participation of Leigh Seville that commenced while these former students attended Selwyn House School.

(d) SUB-GROUP II – the Family Group

Living mothers and living fathers, current spouses (including common law spouses) and children of the individuals described in the above defined "Student Group".

T.Y. and M.Y. v. L'Association Selwyn House (500-06-000336-061)

(c) SUB-GROUP I – the Student Group

All former students of Selwyn House School who allege that they were the victims of abuse perpetrated by or with the participation of James P. Hill that commenced while these former students attended Selwyn House School.

(d) SUB-GROUP II – the Family Group

Living mothers and living fathers, current spouses (including common law spouses) and children of the individuals described in the above defined "Student Group".

D.J. and C.C. v. L'Association Selwyn House and John Aimers (500-06-000335-063)

(e) SUB-GROUP I – the Student Group

All former students of Selwyn House School who allege that they were the victims of abuse perpetrated by or with the participation of John Aimers that commenced while these former students attended Selwyn House School.

(f) SUB-GROUP II – the Family Group

Living mothers and living fathers, current spouses (including common law spouses) and children of the individuals described in the above defined "Student Group".

[89] **ORDERS** that the Settlement Notice attached hereto as **Exhibit P-3** be provided to the Group Members by the Settlement Order Notice Date as defined in the Agreement;

[90] **ORDERS** and **AUTHORIZES** that the Settlement Notice attached hereto as **Exhibit P-3** be given by mail and e-mail using the records and alumni lists of the Respondent Selwyn;

[91] **RECOMMENDS** that the Settlement Notice contain a statement, indicating in bold print: "CAUTION! CLAIMANTS SHOULD ACT PROMPTLY, AS DEADLINES MAY INVALIDATE A CLAIM";

[92] **ORDERS** that members of the Groups who wish to Opt Out of this proceeding must do so by sending an "Opt-Out Form" (Schedule C of the Agreement) to: Selwyn's Legal Counsel, Nicholl Paskell-Mede, Re Selwyn House Class Action Settlement, at 630 René-Lévesque Blvd. West, Suite 1700, Montreal, Quebec, H3B 1S6 post-marked on or before the Opt Out Deadline, being the date which is sixty (60) days following the Settlement Order Notice Date as defined in the Amended Agreement;

[93] **ORDERS** that the deadline for filing a claim is the "Opt Out Deadline", being the date which is sixty (60) days following the Settlement Order Notice Date as defined in the Amended Agreement;

[94] **DECLARES** that the Motions having court file numbers 500-06-000310-058, 500-06-000336-061 and 500-06-000335-063 are settled out of Court in accordance with the Amended Agreement, with no award as to costs;

[95] **ORDERS** that Class Counsel, on behalf of M.G. and G.M., seek the dismissal with prejudice and without costs of *M.G.* and *G.M.* v. *L'Association Selwyn House,* 05-CV-297637-CP within thirty-three (33) days after the Opt Out deadline;

[96] **ORDERS** that Selwyn House School is responsible for the expenses associated with the notices that were or are to be published in accordance with paragraphs 9 and 12 of the Amended Agreement;

[97] **ORDERS** on a final basis that Schedules D, F(a) and F(b) to the Amended Agreement and the originals of Exhibits P-4 to P-9 of the original Motion as well as the originals of Exhibits P-5 to P-10 of the New Motion be kept under seal and will not be made accessible to the public;

[98] **ORDERS** that Exhibits A, D, E, F, G, H, I and J as well as Exhibits [A], [B] and [C] to Exhibit J, being all attachments to the affidavit of Fabrice Gouriou dated October 3, 2006, remain accessible to the public, only after the Court has blacked out any personal information allowing anyone directly or indirectly to identify a petitioner or a relative of a petitioner;

[99] **AFFIRMS** the Pseudonym Orders issued in these cases on September 28, 2005 and February 3, 2006;

[100] **ORDERS** on a final basis that anyone having knowledge of the Pseudonym Orders and of this judgment be restrained from publishing or otherwise revealing the names of the Petitioners, or either of them, or the identity or names of any of the putative group members or any feature that might disclose their identities or the identity of any of them.

PIERRE-C. GAGNON J.S.C.

Mtre Irwin I. Liebman
LIEBMAN & ASSOCIATES
For the Petitioners

Mtres Bryan McPhadden, Zoran Semac and Fabrice Gouriou
MCPHADDEN, SAMAC, MERNER, BARRY (Toronto)
For the Petitioners

Mtres Carolena Gordon et André Lepage
NICHOLL PASKELL-MEDE
For the Respondent L'Association Selwyn House

Mtre Anne Walker
ISAACS & CO. (Toronto)
For the Respondent John Aimers

Me Mark Bantey
GOWLING LAFLEUR HENDERSON, S.E.N.C.R.L.
For the Interveners

Date of hearing: September 22, 2008.