Court Certifies Sexual Assault Class Action Against The Royal Winnipeg Ballet And Former Instructor

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In what is considered a bellwether case, Justice Perell has certified a class action founded upon alleged historical and systematized sexual misconduct.

By his June 27, 2018 decision in Doucet v. The Royal Winnipeg Ballet, Justice Perell of the Ontario Superior Court of Justice granted certification to a proposed class action involving students of the renowned Royal Winnipeg Ballet.

In April 2015, a number of national news outlets published articles reporting that Bruce Monk was dismissed by the Royal Winnipeg Ballet because of allegations that he had photographed young female students in the nude. Between 1984 and 2015, Mr. Monk was employed as a member of the dance company as an instructor/teacher and also as a photographer at the ballet school.

On April 18, 2015, Maclean's Magazine published a cover story entitled "Scandal at the Ballet." The article tells the stories of four former students of the Royal Winnipeg Ballet who were photographed by Mr. Monk in nude or partial nude poses. It was reported that Mr. Monk had published and sold some of the images, including sales over the internet.

The class action was filed on November 17, 2016. Some of the women mentioned in the Maclean's article became involved in the class action, including Ms. Doucet, who was the class representative plaintiff.

The plaintiffs allege three core wrongdoings: (1) by his conduct of taking intimate photographs in the private settings, Mr. Monk sexually assaulted the students he photographed; (2) Mr. Monk's taking of intimate images of the students was a breach of fiduciary duty by abusing his position of power and trust; and (3) Mr. Monk's disseminating and selling the intimate photographs without the students' consent was a breach of a variety of statutory and common-law privacy and confidentiality torts.

The plaintiffs proposed 45 common issues based on the following causes of action: (a) negligence; (b) vicarious liability; (c) breach of fiduciary duty; (d) breach of contract; (e) breach of trust; (f) intrusion upon seclusion; (g) breach of confidence; (h) public disclosure of private facts; (i) unjust enrichment; (j) sexual assault and sexual abuse; (k)

occupiers' liability; (l) privacy statute violations; and (m) dependents' derivative claims under s. 61 of the Family Law Act.

Sexual assault as alleged is by its very nature an individual tort. In that regard, Justice Perell agreed with the defendants that individual issues trials are inevitable in this case. However, he nevertheless held that there were sufficient common issues for the matter to be certified as a class action. He reasoned that, in the immediate case, the relationship between a teacher and student at the Royal Winnipeg Ballet arguably creates a duty of care and a fiduciary relationship, based on the class members' shared vulnerability.

In other words, "there is an institutional association that brought Mr. Monk and the putative Class Members together, and the dance students tell essentially the same story about their experiences with Mr. Monk." As such, Justice Perell proceeded to certify the class action on 23 of the proposed common issues.

Significantly, Justice Perell's decision affirms that alleged sexual misconduct (in some cases going back decades) has the potential to form the basis of certified class actions, if a common thread experience can be pulled out of the systemic and historical fabric of the alleged tort. Yet, it is worth bearing in mind that not all cases will have the requisite commonality underpinning the alleged sexual misconduct. Even if sexual assault claims are not certifiable as a class action, they could nevertheless proceed as many individualized actions.

The Royal Winnipeg Ballet is part of a slate of other institutions, historically functioning in environments with noticeable gender imbalances (such as law enforcement, the military, entertainment, and aviation), that have been implicated in proposed or certified class actions. In light of the current social and political climate, this slate is anticipated to grow.

While the allegations underpinning these matters have yet to be proven in court, these cases give renewed impetus for employers to implement comprehensive workplace harassment and complaints policies, promote a culture of diversity and inclusion within the organization, and develop expertise in investigating and resolving complaints that have been brought forward.

By

Henry Ngan

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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