

COURT FILE NO.: 08-CV-347100CP

DATE: March 4, 2009

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**LISA CAVANAUGH, ANDREW HALE-BYRNE,
RICHARD VAN DUSEN, ~~and~~ MARGARET GRANGER and TIM BLACKLOCK**

Plaintiffs

- and -

**GRENVILLE CHRISTIAN COLLEGE, THE INCORPORATED SYNOD OF THE
DIOCESE OF ONTARIO, CHARLES FARNSWORTH, BETTY FARNSWORTH,
J. ALASTAIR HAIG and MARY HAIG**

Defendants

**A PROCEEDING INSTITUTED PURSUANT TO
THE CLASS PROCEEDINGS ACT,
1992, S.O. 1992, c 6**

COUNSEL:

L. Merritt, for the Plaintiffs

G.D.E. Adair, Q.C., for the Defendants Grenville Christian College, Charles Farnsworth,
Betty Farnsworth, and J. Alastair Haig

HEARING DATE: March 2, 2009

REASONS FOR DECISION

PERELL, J.

Introduction and Overview

[1] This is a pleadings motion in a proposed class action under the *Class Proceedings Act, 1992*.

[2] The proposed representative plaintiffs are Lisa Cavanaugh, Andrew Hale-Byrne, Richard Van Dusen, Margaret Granger and Tim Blacklock. They are former students who

resided at the defendant Grenville Christian College, where it is alleged that they and other proposed class members suffered sexual, physical, psychological, emotional, or spiritual abuse between September 1973 and July 1997.

[3] The College was founded by the defendants J. Alexander Haig and Charles Farnsworth, who were ordained as Anglican priests in September 1977. Fathers Haig and Farnsworth operated the college, and their wives, the defendants Mary Haig and Betty Farnsworth were respectively an administrator and an administrator and instructor at the College.

[4] The College is alleged to be an affiliate of the defendant, the Incorporated Synod of the Diocese of Ontario, an Anglican Diocese. The Plaintiffs allege that the Diocese was responsible for supervising Fathers Haig and Farnsworth.

[5] It is alleged that the College adopted the educational and religious instruction practices of the Community of Jesus in Massachusetts, which is not a party defendant to the proposed class action.

[6] The defendants are sued for \$200 million as compensation for breach of fiduciary duty, negligence, assault, battery and intentional infliction of mental suffering.

[7] Pursuant to rules 25.06 (1), (2), and (8), rule 21.01 (1)(b) and rule 25.11 (a), the College moves for an order striking out the Plaintiffs' Amended Statement of Claim. The College submits that the Plaintiffs' plea of breach of fiduciary duty is predicated on a fiduciary duty to act in the best interest of children, but that this plea is a cause of action not known to law. The College submits that the Plaintiffs' pleading pleads irrelevant matters and matters of social debate instead of justiciable misconduct. The College submits that it is impossible for it to meet the case it has to meet because the Plaintiffs' pleading pleads two class actions and thus the College cannot identify the case it confronts. Further, the College submits that there are no material facts pleaded to support any of the important claims and it submits "there is no basis in the pleading for the court to infer that the misconduct perpetrated upon the representative plaintiffs would have been sustained by the class and it is impossible to even identify what the representative plaintiffs themselves complained of." Finally, the College submits that "requiring a trial to proceed based on this pleading – even supplemented by isolated amendments of particulars – would allow the Plaintiffs to embark upon proof of that which is not actionable in law and risks the parties engaging in an exercise without boundaries."

[8] The College asks that the Amended Statement of Claim be struck in its entirety and that the action be dismissed, but during argument, it conceded that if the pleading was struck, the Plaintiffs should be granted leave to deliver a fresh as amended statement of claim.

[9] As I will explain below, there are problems with the Plaintiffs' Amended Statement of Claim. For example, there are instances of pleading evidence and argument, there are irrelevancies, and there non justiciable allegations. These problems are exacerbated by the fact that this is a proposed class action, which entails that if the

representative plaintiffs are to achieve certification of their action as a class proceeding, they must plead claims that yield not only common issues but that also must satisfy the other elements for certification as a class proceeding. The problems with the Amended Statement of Claim are further exacerbated by the unusual nature of the wrongdoing alleged to have been perpetrated by the Defendants, for which wrongdoing the precedents for normative pleadings are of little assistance.

[10] That said, the College protests too much.

[11] In my opinion, the Amended Statement of Claim, which bares a resemblance to the statement of claim in the residential schools class action, *Cloud v. Canada (Attorney General)* (2004), 73 O.R. (3d) 401 (C.A.), leave to appeal to the S.C.C. ref'd, [2005] S.C.C.A. No. 50, (a copy of which pleading was provided to me during argument), is, in large part, compliant with the rules for pleading or within the generous tolerance provided by the case law.

[12] In my opinion, although the Amended Statement of Claim needs some lancing and some refurbishing, most of it is adequate. Because most of the pleading is adequate, in my opinion, it would be inappropriate to strike it out in its entirety.

[13] Rather, in my opinion, the appropriate order is to strike out the problematic parts of the Amended Statement of Claim. As I will explain below, I find there to be seven problematic parts, and depending on the nature of the problem, in some instances, leave to amend should be granted and in other instances, the offending part should be struck out without leave to amend.

[14] To achieve these results, which I think are called for in accordance with the rules for pleading, and to explain my Reasons for Decision, will require me to take three steps.

[15] First, with one reservation, I will identify the parts of the Amended Statement of Claim that, in my opinion, are compliant with the rules for pleading. I will do this by excising the problematic parts from the pleading. By process of elimination, what remains is what I regard as the compliant or tolerable pleading. The reservation is that this exercise is without prejudice to the arguments the Defendants may have later to challenge: (a) whether there is an identifiable class of two or more persons that would be represented by the representative plaintiffs; and (b) whether the claims of the class members raise common issues.

[16] Second, I will discuss the problematic parts that are to be struck from the Amended Statement of Claim, and I will indicate whether leave to amend should be granted for each discrete problematic part.

[17] Third, I will have some concluding comments about the compliant or tolerable parts of the pleading and about the effect of my order striking out some portions of the Amended Statement of Claim without leave to amend.

[18] I end this introduction by explaining that the Plaintiffs' pleading has already been amended mainly because of the addition of an additional representative plaintiff. This motion, however, is the first substantive challenge to the Plaintiffs' pleading.

The Sustainable Pleading

[19] As I have already mentioned in the introduction, in my opinion, parts of the Amended Statement of Claim are compliant with or within the tolerances of the rules for pleading. However, parts of the pleading are problematic. To differentiate the proper from the problematic, I will set out below the Amended Statement of Claim, but I will delete the problematic parts except for their paragraph number. The resulting pleading is as follows:

CLAIM

1. The Plaintiffs representing the Classes herein described claim:
 - (a) A declaration that the Defendants have breached their fiduciary obligations owed to the Plaintiffs arising from their conduct, and that of their servants, agents or employees, in the operation of Grenville Christian College;
 - (b) Compensation and/or damages for breach of fiduciary duty, negligence, assault, battery and intentional infliction of mental suffering in the amount of \$200 million;
 - (c) Direction for the payment of the moneys payable pursuant to this action to members of the Plaintiff Classes on such terms as this Honourable Court deems just;
 - (d) In the alternative, directing individual assessments of damages;
 - (e) Punitive, exemplary and/or aggravated damages in the amount of \$25 million;
 - (f) A *Mareva* injunction as against the defendant Grenville Christian College;
 - (g) Prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C43, as amended;
 - (h) Their costs of this action on a substantial indemnity basis; and
 - (i) Such further and other relief as to this Honourable Court may seem just.

PARTIES

2. The Plaintiff, Lisa Cavanaugh (nee Laushway), resides in Kanata, Ontario and attended Grenville Christian College as a day student in 1984-87 and then as a resident student from 1987-1989.
3. The Plaintiff, Andrew Hale-Byrne, resides in Chelsea, London, in the United Kingdom and attended as a resident student at Grenville Christian College from 1988-1990.
4. The Plaintiff, Richard Van Dusen, resides in Toronto, Ontario and attended as a resident student at Grenville Christian College from 1979-1981.
5. The Plaintiff, Margaret Granger, resides in Kemptville, Ontario. Ms. Granger was born in 1970 at which time her parents worked at Grenville Christian College and she was raised at Grenville Christian College where she attended school and eventually became a staff member until 2001.
6. The Plaintiff, Tim Blacklock, resides in Glenburie, Ontario, and attended as a resident student at Grenville Christian College from 1976-1977.
7. The Plaintiffs, Lisa Cavanaugh, Andrew Hale-Byrne, and Richard Van Dusen, and Tim Blacklock, are the proposed Representative Plaintiffs for the Student Class as defined herein.
8. The Plaintiff, Margaret Granger, is the proposed Representative Plaintiff of the Staff Student Class as defined herein.
9. The Defendant, Grenville Christian College is a non-share corporation incorporated pursuant to the laws of the Province of Ontario on August 29, 1969 having Ontario Corporation number 226937. It operated at all material times as Grenville Christian College in Brockville, Ontario.
10. The Defendant, The Incorporated Synod of the Diocese of Ontario (hereafter "Diocese of Ontario") is an Anglican Diocese responsible for the ordination and supervision of Fathers Farnsworth and Haig and is affiliated with Grenville Christian College.
11. The Defendant, Charles Farnsworth is an ordained Anglican deacon and priest who, together with Father Haig, founded and operated Grenville Christian College from 1969 to 1997. The Plaintiffs state that Father Farnsworth was an Officer and Director of Grenville Christian College during the period 1969 to 1997.

12. The Defendant, Betty Farnsworth is the wife of the Defendant, Charles Farnsworth, and at all material times was an administrator at Grenville Christian College during the period 1969 to 1997.

13. The Defendant, J. Alastair Haig is an ordained Anglican deacon and priest who, together with Father Farnsworth, founded and operated Grenville Christian College during the period 1969 to 1983. The Plaintiffs state that Father Haig was an Officer and Director of Grenville Christian College during the period 1969 to 1983.

14. The Defendant, Mary Haig is the wife of the Defendant, J. Alastair Haig, and at all material times was an instructor and administrator at Grenville Christian College during the period 1969 to 1983.

STUDENT CLASSES

15. The Plaintiffs propose that the Plaintiff Classes be defined as follows:

(a) **The Student Class:** Students who attended and resided at Grenville Christian College between September 1973 and July 1997, except members of the Staff Student Class and except the children and grandchildren of the individual Defendants; and,

(b) **The Staff Student Class:** Students who attended and resided on the grounds of Grenville Christian College and whose parents were employed as staff at any time during the period September 1973 to July 1997, except the children and grandchildren of the individual Defendants.

HISTORY OF GRENVILLE CHRISTIAN COLLEGE

16. In 1969, J. Alastair Haig and Charles Farnsworth incorporated The Berean Fellowship International of Canada for the purpose of operating a private Christian school in Brockville, Ontario.

17. The school was established in 1969 and was initially known as The Berean Christian School with classes from kindergarten through grade 12, although it later also taught grade 13.

18. In 1973, the school changed its name to Grenville Christian College and operated under that name until it closed in July, 2007. Articles of Amendment were filed on May 5th, 1975 to change the corporate name from The Berean Fellowship International of Canada to Grenville Christian College.

19. J. Alastair Haig was the original headmaster and held that position until he was recalled to the Community of Jesus in 1983.

20. Charles Farnsworth became co-headmaster with Haig in the 1970's and sole headmaster of the school in 1983 and occupied that position until he retired in 1997.

21. On September 29, 1977, J. Alastair Haig and Charles Farnsworth were ordained as Anglican priests by Bishop Henry G. Hill, Bishop of Ontario, who was also the Episcopal visitor of the Community of Jesus. Charles Farnsworth had no prior seminary training or academic degree. J. Alastair Haig had a degree in physical education from the University of Toronto and was previously ordained as a minister in the United Church of Canada. Following their ordination and at all material times thereafter, Father Haig and Father Farnsworth were licensed by the Bishop of Ontario and/or the Diocese of Ontario to act as Anglican clergy at Grenville Christian College.

22. In 1973, J. Alastair Haig and his wife invited Mother Cay and Mother Judy, two of the principal founders of the Community of Jesus in Massachusetts to visit the school, to meet with staff and to provide advice and direction on the operation of the school, including school discipline and religious instruction for staff and children.

23. The teachings and advice provided by Mother Cay and Mother Judy were relied upon and incorporated into practices of the headmasters and staff at Grenville Christian College throughout the period of 1973-1997.

24. Bishop Hill of the Diocese of Ontario was at all material times aware of the relationship between the Haigs and Farnsworths and the Community of Jesus and was aware that the teachings of Mother Cay and Mother Judy were practiced at Grenville Christian College under the direction of the Haigs and the Farnsworths.

25. [Problematic]

26. [Problematic]

27. [Problematic]

28. Although some of the children who attended Grenville Christian College were day students, i.e., they went home every day to their families, the Plaintiff Classes were students who resided on the school property. The Plaintiffs state that for all intents and purposes, those students who attended and resided at the school either as staff children or boarding students were wards of the school.

29. The children in the Student Class at Grenville Christian College were in grades 7 to 13, inclusive. Those students ate, slept, worked and attended school at Grenville Christian College. All of those students were required to attend and participate in religious instruction and services at the

chapel located on the grounds of Grenville Christian College and in the school itself. Services were performed by, *inter alia*, Fathers Haig and Farnsworth and, from time to time visiting Anglican clergy.

30. The Staff Students also resided on the grounds of Grenville Christian College; however, unlike the members of the Student Class, they were not required to reside in the dormitories onsite. Some Staff Students resided with their parents in apartment-style housing on the grounds of Grenville Christian College. However, in some situations, staff students were removed from their parents, some as early as age 5, and reared by other members of the staff at the direction of the headmasters ... [Problematic] ... The decision of the headmasters to relocate staff's children to particular guardians among the staff was entirely in the discretion of the headmasters.

31. [Problematic]

32. [Problematic]

33. [Problematic]

34. The Plaintiffs state that the conduct of the Defendants aforesaid was calculated to produce harm and did, in fact, produce physical, emotional, psychological and spiritual harm to the members of the Student Class and Staff Student Class.

35. The Plaintiffs state that the Defendants instituted a system of punishment which was excessive ... [Problematic]

36. The Plaintiffs state that pursuant to that system of punishment, members of the Student Class and Staff Student Class who were singled as "problems" were subjected to discipline, strappings and other corporal punishment which was excessive in force or duration.

37. Further, the Plaintiffs state that the Defendants engaged in a system of threatening corporal punishment as a means to coerce students to follow the teachings of the Community of Jesus.

DAMAGES

38. The Plaintiffs state that the corporate Defendant, Grenville Christian College, is responsible in law for the conduct of its Officers, Directors, Employees, Servants and Agents more particularly described above.

39. Further, the Plaintiffs state that the Defendant, Diocese of Ontario, was aware or should have been aware of the conduct of the individual Defendants and the staff at Grenville Christian College, but took no steps to

report the abuse to the appropriate authorities or parents. The Plaintiffs state that the Defendants' failure to investigate or report its knowledge of the conduct at the school constitutes negligence and/or breach of fiduciary duty.

40. The Plaintiffs state that the Defendants knew, or ought to have known, that as a consequence of their mistreatment of the children who attended Grenville Christian College, those students would suffer significant sexual, physical, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and others; ... [Problematic]

41. Members of the Student Class and the Staff Student Class were sexually, physically, mentally, emotionally and spiritually traumatized by their experiences arising from their attendance at Grenville Christian College. In general, and without restricting the generality of the foregoing, the Plaintiffs suffered,

- (a) A loss of self esteem and confidence and feelings of humiliation and degradation;
- (b) An inability to complete or pursue their education;
- (c) Impaired ability to obtain and sustain employment, resulting in lost or reduced income and ongoing loss of income;
- (d) Reduced earning capacity;
- (e) An impaired ability to deal with persons in authority;
- (f) An impaired ability to trust other people or to sustain intimate relations;
- (g) Fear and intimidation;
- (h) Deprivation of the love and guidance of their parents, siblings and other family members;
- (i) A sense of isolation and separateness;
- (j) An impaired ability to express emotions in a normal and healthy manner;
- (k) An impaired ability to control anger and rage;
- (l) Psychological disorders, including eating disorders, depression and anxiety leading in some cases to attempted suicide or suicidal tendencies;

- (m) Post traumatic stress disorder;
- (n) A requirement for medical and psychological treatment and counselling;
- (o) An increased need for medical and psychological treatment and counselling;
- (p) An impaired ability to enjoy and participate in recreational, social and athletic and employment activities;
- (q) Loss of friendship, companionship and support of friends and community;
- (r) Physical pain and suffering;
- (s) Sexual disorientation as a child and an adult;
- (t) Sexual trauma for those who were sexually abused;
- (u) An inability to undergo normal and healthy peer development and sexual development;
- (v) Damage to their faith; and
- (w) Loss of enjoyment of life.

42. The Plaintiffs state that the damages suffered by the Plaintiffs were an entirely foreseeable consequence of the conduct of the Defendants aforesaid.

43. The Plaintiffs plead that the Defendants' conduct and actions in the circumstances have caused them to develop certain psychological mechanisms in order to survive the abuse. The mechanisms include denial, repression, disassociation and guilt.

44. The Defendants' conduct prevented the Plaintiffs from discovering the wrongfulness of their actions, the nature of their injuries and/or the nexus between their injuries and the abuse. The Plaintiffs have blamed themselves for the abuse.

45. The Plaintiffs have received little or no meaningful therapy regarding the abuse. They are still in the process of coming to understand and appreciate the full extent of the injuries caused to them by the abuse and the nexus between the abuse and the injuries caused by the abuse. The Plaintiffs require therapy and medical attention.

46. The Plaintiffs plead that, as victims of abuse, they are only now discovering the necessary connection between their injuries and the wrong done to them by the Defendants.

47. The Plaintiffs were incapable of commencing the proceeding before now because of their physical, mental or psychological condition.

48. The Plaintiffs plead that at the time of the assaults, negligence and breaches of duties, the Defendants had charge of the Plaintiffs, were in positions of trust or authority in relation to the Plaintiffs and were persons on whom the Plaintiffs were dependent.

49. The Plaintiffs plead and rely on the provisions of the *Limitations Act*.

50. The Plaintiffs plead and rely on Rule 17.02 of the Rules of Civil Procedure.

51. The Plaintiffs respectfully request that this action be tried at Toronto, Ontario.

The Problematic Parts of the Amended Statement of Claim

[20] For the reasons that follow, in my opinion, seven parts of the Amended Statement of Claim are problematic and should be struck out from the pleading. For each problematic part, I will explain whether the Plaintiffs should be granted leave to amend the pleading.

[21] Before identifying the problematic parts of the pleading, I will briefly set out the law that I will be employing to identify the problems with the pleading. I rely on the following principles:

- Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved: Rule 25.06 (1).
- A material fact is a fact that is necessary for a complete cause of action: *Bruce v. Odhams Press Ltd.*, [1936] 1 K.B. 697. Material facts include facts that establish the constituent elements of the claim or defence: *Philco Products, Limited v. Thermionics, Limited*, [1940] S.C.R. 501 at p. 505.
- Material facts include any facts that the party pleading is entitled to prove at trial, and at trial, anything that affects the determination of the party's rights can be proved; accordingly, a material fact is a fact that can have an affect on the determination of a party's rights: *Hammell v. The British American Oil Company Ltd.*, [1945] O.W.N. 743 (Master); *Daryea v. Kaufman* (1910), 21 O.L.R. 161; *Flexlume Sign Co. v. Hough* (1923), 53 O.L.R. 611; *Brydon v. Brydon*, [1951] O.W.N. 369 (C.A.).

- A fact that is not provable at the trial or that is incapable of affecting the outcome is immaterial and ought not to be pleaded. As described by Justice Riddell in *Duryea v. Kaufman*, (1910) 21 O.L.R. 161 (H.C.J.) at p. 168, such a plea is said to be “embarrassing;” he said: “No pleading can be said to be embarrassing if it alleges only facts which may be proved - the opposite party may be perplexed, astonished, startled, confused, troubled, annoyed, taken aback, and worried by such a pleading - but in a legal sense he cannot be “embarrassed.” But no pleading should set out a fact which would not be allowed to be proved - that is embarrassing.” A pleading that raises an issue that can have no effect upon the outcome of the action is embarrassing and may be struck out: *Guaranty Trust Co. of Canada v. Public Trustee* (1978), 20 O.R. (2d) 247 (H.C.J.); *Everdale Place v. Rimmer* (1975), 8 O.R. (2d) 641 (H.C.J.); *Wood Gundy Inc. v. Financial Trustco Capital Ltd.* (1988), O.J. No. 275 (Master); *Elder v. City of Kingston*, [1953] O.W.N. 409 (H.C.J.).
- A pleading should not describe the evidence that will prove a material fact; pleadings of evidence may be struck out: *Sun Life Assurance Co. of Canada v. 401700 Ontario Ltd.* (1991), 3 O.R. (3d) 684 (Gen. Div.). What the prohibition against pleading evidence is designed to do is to restrain the pleading of facts that are subordinate and that merely tend to prove the truth of the substantial facts in issue: *Grace v. Usalkas*, [1959] O.W.N. 237 (S.C.); *Phillips v. Phillips* (1878), 4 Q.B.D. 127.
- Pleadings that are irrelevant, argumentative, or inserted only for colour or that constitute bare unfounded allegations should be struck out as scandalous: *Senechal v. Muskoka (District Municipality)*, [2003] O.J. No. 885 (S.C.J.). A pleading may be struck out if it fails to comply with the formalities of a proper pleading, which require a concise and comprehensible statement of material facts and not a disorganized ambiguous mixture of facts, evidence, arguments, and law: *National Trust Co. v. Furbacher*, [1994] O.J. No. 2345 (Gen. Div.); *Watt v. Beallor Beallor Burns Inc.*, [2004] O.R. No. 450 (S.C.J.); *McCarthy Corp. PLC v. KPMG LLP*, [2005] O.J. No. 3017 (S.C.J.); *Chopik v. Mitsubishi Paper Mills Ltd.*, [2002] O.J. No. 2780 (S.C.J.); *Balanyk v. University of Toronto* (1999), 1 C.P.R. (4th) 300 (Ont. S.C.J.); *Dairy Queen Canada Inc. v. Terelie Holdings (Newmarket) Inc.*, [2000] O.J. No. 964 (S.C.J.); *Cadillac Contracting & Developments Ltd. v. Tanenbaum*, [1954] O.W.N. 221 (H.C.J.), leave to appeal to C.A. refused, [1954] O.J. No. 17 (H.C.J.); *Carlstrom v. Philip*, [2005] O.J. No. 3390 (Master); *E. & S. Carpentry Contractors Ltd. v. Fedak* [1980] O.J. No. 1569 (H.C.J.).
- Where the moving party submits that the plaintiff's pleading does not disclose a reasonable cause of action, to succeed in having the action dismissed, the moving party must show that it is plain, obvious, and beyond doubt that the plaintiff could not succeed in the claim: *Hunt v. Carey Canada Inc.*, [1990] 1 S.C.R. 959. The novelty of a claim will not militate against a plaintiff: *Johnson v. Adamson* (1981), 34 O.R. (2d) 236 (C.A.), leave to appeal to the Supreme Court of Canada refused (1982), 35 O.R. (2d) 64n. In assessing the cause of action, the court

accepts the allegations of fact as proven, unless they are patently ridiculous or incapable of proof: *A-G. Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.

- Matters of law that are not fully settled should not be disposed of on a motion to strike: *Nash v. Ontario* (1995), 27 O.R. (3d) 1 (C.A.); *Folland v. Ontario* (2003), 64 O.R. (3d) 89 (C.A.), leave to appeal to S.C.C. refused 229 D.L.R. (4th) vi (S.C.C.); *Transamerica Life Canada Inc. v. ING Canada Inc.* (2003), 68 O.R. (3d) 457 (C.A.), and the court's power to strike a claim is exercised only in the clearest cases: *Temelini v. Ontario Provincial Police (Commissioner)* (1990), 73 O.R. (2d) 664 (C.A.); *Clement v. McGuinty* (2001), 18 C.P.C. (5th) 267 (Ont. C.A.).

[22] I also rely on the notion of justiciability, which is the idea that there are some disputes that are outside the court's jurisdiction to resolve because they are not legal or juridical in nature. A dispute is not justiciable where it requires a court to decide a matter of morality, religious doctrine, politics or the wisdom of government action: *Levitts Kosher Foods Inc. v. Levin*, (1999), 45 O.R. (3d) 147 (S.C.J.); *Black v. Canada (Prime Minister)*, (2001), 54 O.R. (3d) 215 (C.A.), affg. (2000), 47 O.R. (3d) 532 (S.C.J.); *Canada (Auditor General) v. Canada (Minister of Energy, Mines & Resources)*, [1989] 2 S.C.R. 49; *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441.

[23] Relying on these principles, the first problematic part of the pleading are paragraphs 25 to 27 inclusive, which state:

25. Following their ordination as Anglican ministers, Grenville Christian College held itself out as an Anglican private school where children who attended would be taught in the Anglican faith and with Anglican values.

26. During the period of 1973-1997, the school expanded its operations principally through increased enrolment as a result of its connection with the Diocese of Ontario and the Anglican values which it was supposedly promoting.

27. The Diocese of Ontario regularly held meetings and workshops at Grenville Christian College, attended and participated in special ceremonies held at the school and blessed the buildings and many objects within the buildings. The newly constructed chapel at Grenville Christian College was consecrated as an Anglican Chapel on November 14, 1994 by four Anglican Bishops, at which time members and "clergy" of the Community of Jesus were present and participated in the ceremony.

[24] The apparent purpose of these three paragraphs is to connect in a legally significant way the defendant the Grenville Christian College with the defendant the Incorporated Synod of the Diocese of Ontario. This connection, however, is made in paragraphs 10, 11, 13, 21, 24, 29, and 39 of the Amended Statement of Claim. These three paragraphs are redundant, and they are pleadings of evidence as opposed to material

facts. Moreover, to the legally trained, the language of these paragraphs creates confusion because the words "held itself out" and "would be taught in the Anglican faith" suggest some sort of insufficiently pleaded negligent or fraudulent misrepresentation claim. Further, in the context of the pleading as a whole and in the context of the claims actually being advanced by the Representative Plaintiffs, whether the events at the College were aspects of the Anglican faith or Anglican values is non-justiciable and irrelevant. Therefore, I strike out these three paragraphs and I do not grant leave to amend.

[25] The second problematic part of the pleading is part of paragraph 30, which states:

* ... so as to prevent too close a bond developing between these children and their parents.

[26] In my opinion, the point being made here in paragraph 30 is not a material fact, it is argument, and it seems irrelevant. Therefore, I strike this part out, and I do not grant leave to amend.

[27] The third problematic part of the pleading is paragraph 31, which states:

31. The Plaintiffs state that the Defendants owed a fiduciary obligation to the Plaintiffs while they attended Grenville Christian College, which obligations included, but were not limited to, the duty to act in the best interests of the children, to provide a loving, caring and nurturing environment, to protect the children from sexual, physical, emotional, psychological and spiritual abuse, to ensure that the children received a proper and good quality education, and to safeguard the well-being of the children in their care and custody.

[28] A fundamental aspect of the Plaintiffs' claim is that there was a fiduciary relationship between the Plaintiffs and the Defendants. Given the facts pleaded in the parts of the Amended Statement of Claim that I have found to be compliant or tolerable, most particularly the facts that: the Plaintiffs were students at the school; they resided at the school; they are alleged to be "wards of the school"; some were assigned guardians among the school's staff; and they received their secular and religious education at the school, paragraph 31 is redundant and argumentative. Further, in my opinion, once the problems associated with paragraphs 32 and 33, next to be discussed, are solved (and I am confident that these problems can be solved), paragraph 31 becomes unnecessary from a pleadings perspective. Therefore, I strike out this paragraph without leave to amend.

[29] The fourth problematic part of the pleading is paragraph 32, which contains subparagraphs (a) to (v). Before setting out the text of this long paragraph, I foreshadow the analysis to point out that, in my opinion, a major source of difficulty here is that the Plaintiffs' approach is to use "and/or" to provide a list of misconduct that lumps together breaches of fiduciary duty and breaches of duty of care, i.e. elements of a claim in negligence.

[30] This approach is confusing and unhelpful because while negligence and breaches of fiduciary duty may arise from the same facts, doctrinally they are distinct causes of action and it may be difficult for a defendant to receive notice of the case he or she must meet if the material facts for discrete causes of action are not differentiated. This is particularly true in the case at bar because acts of negligence are not necessarily breaches of fiduciary duty and conversely breaches of fiduciary duty are not necessarily acts of negligence. I foreshadow further to point out that some of subparagraphs (a) to (v) are further examples of redundancies, argument, evidence, and non-justiciable issues.

[31] Paragraph 32 states:

32. The Plaintiffs state that the Defendants breached their fiduciary obligations and/or breached their duties of care owed to the Plaintiffs by:

- (a) Failing to have in place any or adequate systems to protect the Plaintiffs from sexual, physical, psychological, emotional or spiritual abuse;
- \ (b) Failing to provide a caring and nurturing environment for the children in their care;
- (c) Demeaning and abusing children who suffered from a physical or learning disability;
- (d) Subjecting students to inappropriate sexual comments and touching;
- (e) Compelling students to display excessively zealous and unquestioning commitment to the leaders of the school and the Community of Jesus, including their ideology as the truth and law;
- (f) Monitoring student communications so as to prevent the disclosure of conduct at the school to parents and other family;
- \ (g) Fostering an atmosphere of fear, intimidation, anxiety and suspicion;
- \ (h) Compelling students to confess sins, real or imagined, and compelling students to betray others;
- \ (i) Inculcating a culture of mind control;
- \ (j) Imposing unwarranted and inappropriate punishments so as to "break the spirit" of the students;
- \ (k) Operating the school as a cult;

- (l) Abusing their positions as spiritual advisors and failing to abide by Anglican doctrine;
- (m) Providing little or no proper sex education while at the same time teaching the students to be fearful and ashamed of their bodies and sex;
- (n) Engaging in the practices of the Community of Jesus without regard to the well-being of the children;
- (o) Engaging in a system of excessive and abusive punishments;
- (p) Failing to provide appropriate supervision;
- (q) Failing to respond to complaints made by staff and/or students regarding the treatment of staff and/or students;
- (r) Failing to ensure a balanced curriculum was taught, one which reflected Anglican teachings and values rather than those of the Community of Jesus;
- (s) Indoctrinating children into the teachings and practices of the Community of Jesus;
- (t) Failing to provide a system by which student complaints and concerns could be addressed;
- (u) Engaging in practices which were aimed at alienating children from their parents and families; and,
- (v) Failing to hire and properly supervise competent staff.

[32] In my opinion:

- (i) subparagraphs (b), (g), (h), (i), (j), and (k) of paragraph 32 are redundancies, argument, or evidence that should be struck from the pleading, without leave to amend;
- (ii) subparagraphs (e), (l), (n), (r), and (s) of paragraph 32 raise non-justiciable issues that should be struck from the pleading, without leave to amend;
- (iii) the balance of the subparagraphs of paragraph 32; namely subparagraphs (a), (c), (d), (f), (m), (o), (p), (q), (t), (u), and (v) are confusing and do not give proper notice of the Plaintiffs' case to meet, and they should be struck with leave to amend in order to differentiate and properly particularize the Plaintiffs' claims for breach of fiduciary duty and for negligence. Any amended pleading should particularize which wrongs were suffered or witnessed by which representative plaintiff or plaintiffs and which particular defendant or defendants perpetrated the

